

***United States Court of Appeals
for the Second Circuit***



**APPELLEE'S
APPENDIX**

ORIGINAL
WITH PROOF
OF SERVICE

77-6164

UNITED STATES COURT OF APPEALS

for the
SECOND CIRCUIT

ANNA SELMA VINJE MORPURGO,

Plaintiff-Appellant,

-against-

BOARD OF HIGHER EDUCATION IN CITY OF NEW YORK, as Board of Trustees for The City University of New York, the Graduate School and University Center of the City University of New York, and John/Jane Doe, employees, former employees, and JOHN/JANE DOE,

Defendants-Appellees.

ANNA SELMA VINJE MORPURGO,

Plaintiff-Appellant,

-against-

UNITED STATES OF AMERICA, BOARD OF HIGHER EDUCATION N.Y.C., MASSACHUSETTS INSTITUTE OF TECHNOLOGY, PRINCETON UNIVERSITY, and RICHARD KLEINDIENST, WILLIAM SAXBE, EDWARD H. LEVI, HENRY KISSINGER, MARY MOTHERSILL, ALFRED A. GIARDINO, ROBERT J. KIBBEE, DAVID NEWTON, HAROLD M. PROSHANSKY, HANS J. HILLERBRAND, ARNOLD KOSLOW, ABRAHAM EDEL, JULIUS ELIAS, GERALD MYERS, ANDREW J. McLAUGHLIN, JASON SAUNDERS, VIRGINIA HILL, PETER CAWS, RUDOLPH GREWE, C.S. HONG, ROBERTA THORNTON, NORMA BEE, NATHALI LEWIS, KURT SCHMELLER,

Defendants-Appellees.

ANNA SELMA VINJE MORPURGO,

-against-

PROFESSIONAL STAFF CONGRESS/CUNY (PSC), VLADECK ELIAS VLADECK & LEWIS (VLADECK), BOARD OF HIGHER EDUCATION N.Y.C. (BHE) and JUDITH P. VLADECK, ANTHONY DE MEALAS, ABRAHAM EDEL, DAVID NEWTON, ROBERT KIBBEE, ARTHUR W. STERN, FREDDIE G. HOLT, RALPH MUNOZ, VINCENT DONATO, KASINE WALKER, AL KERSEY, MAXINE ARCHER, THOMAS W. BARRON, and JOHN/JANE DOE,

Defendants-Appellees.

ON APPEAL FROM A JUDGMENT OF THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

SUPPLEMENTAL APPENDIX OF DEFENDANT-APPELLEE
PROFESSIONAL STAFF CONGRESS/C.U.N.Y. (PSC)

STURM AND PERL
Attorneys for Defendant-Appellee
Professional Staff Congress/C.U.N.Y.
21 East 40th Street
New York, New York 10013

(For further appearances, please see reverse side of cover.)

PAGINATION AS IN ORIGINAL COPY

ANNA SELMA VINJE MORPURGO

Plaintiff-Appellant Pro Se

Box 1091

Sag Harbor, New York 11963

ROSEMARY CARROLL, ESQ.

Office of Corporation Counsel, New York City

Attorney for Defendants-Appellees

Board of Higher Education, Abraham Edel, David Newton & Robert Kibbee

Municipal Building

New York, New York 10007

ROBERT B. FISKE, JR.

U.S. Attorney for the Southern District of New York

Nathaniel L. Gerber, Esq.

Attorney for Defendants-Appellees

United States of America, Richard Kleindienst,

William Saxbe, Edward H. Levi & Henry Kissinger

One St. Andrew's Plaza

New York, New York 10007

ROBERT G. DESMOND, ESQ.

WIEN, LANE & MALKIN

Attorneys for Defendant-Appellee

Massachusetts Institute of Technology

60 East 42nd Street

New York, New York 10017

RONALD S. HERZOG, ESQ.

JACKSON, NASH, BROPHY, BARRINGER & BROOKS

Attorneys for Defendant-Appellee

Princeton University

330 Madison Avenue

New York, New York 10017

MICHAEL C. McGOINGS, ESQ.

Attorney for Defendants-Appellees

Arthur W. Stern, Freddie G. Holt, Ralph Munoz, Vincent

Donato, Kasine Walker, Al Kersey & Maxine Archer

Equal Employment Opportunity Commission

2401 E Street, N.W.

Washington, D.C. 20506

EDWIN L. SMITH, ESQ.

ANTHONY M. LANZONE & ASSOCIATES

Attorneys for Defendants-Appellees

Vladeck Elias Vladeck & Lewis and Judith P. Vladeck

26 Broadway

New York, New York 10006

MICHAEL MUKASEY, ESQ.

PATTERSON, BELKNAP & WEBB

Attorneys for Defendant-Appellee

Mary Mothersill

30 Rockefeller Plaza

New York, New York 10020

INDEX

	<u>Page</u>
DOCKET ENTRIES	A-1
FIRST AMENDED COMPLAINT	A-3
ANSWER TO FIRST AMENDED COMPLAINT	A-9
PLAINTIFF'S DEPOSITION AND SUPPORTING AFFIDAVIT IN ADVANCE OF DISCOVERY, REGARDING COMPLAINT AGAINST THE VLADECK DEFENDANTS	A-13
NOTICE OF MOTIONS	A-18
MOTION FOR SUMMARY JUDGMENT AND MOTION TO DISMISS THE COMPLAINT	A-20
MEMORANDUM IN SUPPORT OF DEFENDANT PROFES- SIONAL STAFF CONGRESS/CUNY'S MOTION FOR SUM- MARY JUDGMENT AND MOTION TO DISMISS	A-22
AFFIDAVIT OF ARNOLD CANTOR IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT IN FAVOR OF DEFENDANT PROFESSIONAL STAFF CONGRESS/CUNY	A-26
EXHIBIT 1 TO CANTOR AFFIDAVIT - COLLECTIVE BARGAINING AGREEMENT	A-30
EXHIBIT 2 TO CANTOR AFFIDAVIT - ARBITRATION AWARD	A-34
EXHIBIT 3 TO CANTOR AFFIDAVIT - MAX-KAHN MEMORANDUM	A-42
EXHIBIT 4 TO CANTOR AFFIDAVIT - NEW YORK COURT OF APPEALS DECISION	A-47
EXHIBIT 5 TO CANTOR AFFIDAVIT - PLAINTIFF'S AGREEMENT TO WITHDRAW PERB CHARGE	A-53
AFFIDAVIT OF ANNA SELMA VINJE MORPURGO, PLAINTIFF, IN OPPOSITION TO MOTION	A-54
JUDGMENT APPEALED FROM	A-55

DOCKET ENTRIES

5 Civ. 4913 MORPURGO VS CUNY ET AL

Weinfeld, J.

DATE	NR.	PROCEEDINGS
10-6-75	1	Filed order permitting pltf. to proceed in forma pauperis without prepayment of costs or fees. Edelstein, J.
10-6-75	2	Filed complaint and issued summons.
10-29-75	3	Filed in 75 CIV 186-E.W.: plaintiffs affdvt. and notice of motion for assignment of counsel for cases 75 CIV 186 EW; 75 CIV 3840 MEL and 75 CIV 4913 CMM.
10-30-75	3	Filed notice of reassignment to Judge Weinfeld, mn
11-26-75	4	Filed ANSWER of deft. Professional Staff Congress/CUNY. VEV&L
11-26-75	5	Filed ANSWER of defts' Judith P. Vladeck & Vladeck, Elias, Vladeck & Lewis, P.C. VEV&L
12-31-75	6	Filed notice of appearance for deft. Equal Employment Opportunity Comm employees
01-29-76	7	Filed defts. memorandum and notice of motion for an order to dismiss ret. on submission
02-05-76	8	Filed pltf. affdvt. in opposition to E.E.O.C. atty's motion to dismiss
02-09-76	9	Filed summons with marshals return served-- Ralph Munoz by P. Holt on 11-26-75 Arthur W. Stein by F. Holt on 11-26-75 Maxine Archer unable to serve Al Kersey by F. Holt on 11-26-75 Kasine Walker by F. Holt on 11-26-75 Freddie G. Holt by F. Holt on 11-26-75 Vincent Donato by F. Holt on 11-26-76 United States of America by R. Lee on 11-28-75 United States of America P. Troia on 11-28-76
		#285470
02-09-76	10	Filed summons with marshals return served-- Anthony De Mealas unable to serve David Newton unable to serve Professional Staff Congress by Chris Kahne on 11-3-75 Vladeck Elias Cladeck & Lewis by Judith P. Vladeck on 11-5-75 Judith P. Cladeck on 11-5-75 Thomas W. Barron unable to serve Abraham Edel by Janet Wolt on 11-10-75 Board of Higher Education In City of NY by L. Camacho on 12-4-75 Anthony De Mealas unable to serve Robert J. Kibbee by L. Camacho on 12-4-76
02-13-76	11	Filed deft. Equal Employment Opportunity Comm. notice of hearing it's motion pursuant to rules 12(b)(1) and (6) to dismiss pltf's complaint to held on 2-24-76.
03-17-76	==	Filed memo endorsed on document #7: The motions to dismiss the complaints in 75-3840 as against MIT and Princeton and in 75-4913 as against the 7 named employees of the EEOC are granted. Plaintiff, if she so desires, will be given one more opportunity in both actions to allege facts that would entitle her to relief against these defendants, failing which the complaints will be dismissed with prejudice. The <u>amended complaint</u> , if any, is to be served within 20 days from this date. -- Weinfeld, J. m/n by pro-se clerk to pltf. m/n to defts.
04-04-76	12	Filed AMENDED COMPLAINT with affdvt. of service.
04-21-76	13	Filed consent order substituting attorney for Vladeck defendants. -- Weinfeld, J.
04-23-76	14	Filed defendants' memorandum and notice of motion to dismiss the case for lack of jurisdiction and for failure to state a claim. -- ret. (no date)
04-26-76	15	Filed stip. and order ext. deft. Prof. Staff Congress/CUNY's time to answer to amended complaint to 5-1-76. -- Weinfeld, J.
04-30-76	16	Filed stip. and order substit. Attorney of record for deft./Prof. Staff Congress/CUNY -- Weinfeld, J.

75 CIV 4913 Mompurgo v. Prof. Staff Congress/CUNY et.al.
page 3 WEINFELD, J.

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Data (Date of Judgment) Not
04-20-76	17) Filed deft. Vladeck, Elias, Vladeck & Lewis and Judith P. Vladeck's ANSWER to first amended complaint.	
04-28-76	18) Filed deft. Prof. Staff Congress/CUNY's ANSWER to first amended complaint.	
05-05-76	19) Filed deft. Vladeck's first set of interrog. to pltf.	
05-11-76	20) Filed pltf's opposition to the EEOC's motion to dismiss.	
05-11-76	21) Filed pltf's memorandum in opposition to EEOC's motion to dismiss.	
05-07-76	22) Filed defendants Vladeck response to first set of interrog.	
05-15-76	23) Filed pltf's petition for a protective order barring premature disclosure with exhibits attached. -	
06-28-76	24) Filed defts. Professional Staff Congress affdvt. and notice of motion for summary judgment, pursuant to Rule 56 Federal Rules of Civil Procedure.	
06-29-76	25) Filed defts. Vladeck affdvt. and notice of motion for summary judgment pursuant to Rule 56 F.R.C.P. Ret. 07-06-76.	
06-29-76	26) Filed defts. Vladeck Statement of Material Facts Under local rule 2(3).	
06-30-76	27) Filed defts memorandum of law in support of motion for summary judgment.	
06-30-76	28) Filed defts affdvt. of Judith Vladeck in support of motion for summary judgment.	
7-20-76	--- Filed pltf's opposition and notice of in camera submission ret. on July 20, 1976 (filed in 75 Civ. 186)	
11-18-76	=== Filed memo endorsed on document #23: The complaint having dismissed as to the deft. Vladeck, the within application is moot and accordingly is denied. - Weinfeld, J. m/copy to pltf.	
11-18-76	=== Filed OPINION #45374... (re actions 75 Civ 186, 75 Civ 3840 and 75 CIV 4913) The complaint is dismissed against all the defendants in all actions except as to the defendants Edel, Newton, Ribbee, Koslow, Myers, Elias, Thornton, Hong, McLaughlin, Prochansky and Millerbrand in actions 75 Civ 3840 and 75 Civ 4913. Weinfeld, J. m/n (filed in 75 Civ 186)	
11-22-76	29) Filed Vladeck defendants reply affdvt.	
11-22-76	30) Filed deft. Equal Employment Opportunity Comm. motion for ext. of time to reply to pltf's amended complaint.	
11-22-76	31) Filed pltf's affdvt. in opposition to EEOC defts' motion for summary judgment.	
11-22-76	32) Filed pltf's supplemental memorandum.	
11-22-76	33) Filed pltf's affdvt. in opposition to Vladeck defendants motion.	
12-01-76	=== Filed judgment and order dismissing complaint as to all defendants except Abraham Edel, David Newton and Robert Ribbee - Clerk. (filed in 75 Civ 186)	
12-01-76	== Filed pltf's notice of submission of interrog. and request for disclosure of documents from Municipal defendants. (filed in 75 Civ 3840)	
12-14-76	=== Filed pltf's motion for leave to reargue (re opinion #45374) with memo endorsed: Motion denied -- Weinfeld, J. m/n and mailed to pltf. pro-2- (filed in 75 Civ 186)	
12-22-76	=== Filed plaintiffs affdvt. and motion re appeal with memo endorsed: The Court has no objection to pltf pursuing her appeal in forma pauperis only in 75 Civ 186. Pltf. may not consolidate cases for appeal. Only in 75 CIV-186-final judgment was entered. Other 2 cases pending as to a number of undismissed cases. Weinfeld, J. (mailed copy to pltf) -- filed in 75 CIV-186	

FIRST AMENDED COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ANNA SELMA VINJE MORPURGO,

Plaintiff,

75 Civ. 4913 (EW), Pro Se

-v-

FIRST AMENDED COMPLAINT

PROFESSIONAL STAFF CONGRESS/CUNY (PSC)
VLADECK ELIAS VLADECK & LEWIS (VLADECK)
BOARD OF HIGHER EDUCATION N.Y.C. (BHE)
and
JUDITH P. VLADECK, ANTHONY DE MEALAS,
ABRAHAM EDEL, DAVID NEWTON, ROBERT KIBBEE,
ARTHUR W. STERN, FREDDIE G. HOLT,
RALPH MUÑOZ, VINCENT DONATO, KASINE WALKER,
AL KERSEY, MAXINE ARCHER, THOMAS W. BARRON,
and
JOHN/JANE DOE,

Defendants.

Civil Action for Declaratory,
Injunctive, and Monetary
Relief

-----X
Plaintiff, pro se, alleges as follows for her First Amended Complaint:

JURISDICTION

1. This is a civil action for declaratory and injunctive relief and money damages arising under various sections of the Civil Rights Acts including Title VII of the Civil Rights Act of 1964 as amended, and 42 U.S.C. Section 1985 (conspiracy and failure to prevent a conspiracy to interfere with civil rights), and the First Amendment of the Constitution.
2. This action proceeds from a Right-to-sue issued by the United States Department of Justice, on file with the Clerk of the Court.
3. A majority of the acts complained of occurred within the Southern District of New York.
4. Some of the defendants have their principal offices in the Southern District of New York.
5. The matter in controversy, exclusive of interests and costs, exceeds \$10,000.

PARTIES

6. Plaintiff: ANNA SELMA VINJE MORPURGO, Union Street, Sag Harbor, NY 11963, (516) 725 1414, formerly an adjunct lecturer employed by BHE.

7. Defendants:

a. PROFESSIONAL STAFF CONGRESS/CUNY, 25 West 43 Street, New York, NY 10036, collective bargaining unit of BHE, represented by Judith P. Vladeck, Esq. of Vladeck Elias Vladeck & Lewis.

b. VLADECK ELIAS VLADECK & LEWIS, 1501 Broadway, New York, NY 10036, occasionally attorneys for PSC and AFL/CIO, and for CUNY Women's Coalition.

c. BOARD OF HIGHER EDUCATION N.Y.C., 535 East 80 Street, New York, NY 10021, public corporation administering The City University of New York, is represented by Rosemary Carroll, Esq. of Office of Corporation Counsel N.Y.C.

d. JUDITH P. VLADECK, pro se, 1501 Broadway, New York, NY 10036.

e. ANTHONY DE MEALAS, former PSC grievance counselor, c/o Professional Staff Congress/CUNY, 25 West 43 Street, New York, NY 10036.

f. ABRAHAM EDEL, former Executive Officer of the Philosophy Doctoral Program at C.U.N.Y., is represented by Rosemary Carroll, Esq.

g. DAVID NEWTON, former Vice Chancellor of C.U.N.Y., is represented by

Rosemary Carroll, Esq.

h. ROBERT KIBBEE, Chancellor of C.U.N.Y., is represented by Rosemary Carroll, Esq.

i. ARTHUR W. STERN, formerly Director Regional Affairs, Downstate, for the New York State Division of Human Rights, and presently Director of the New York District Office of the Equal Employment Opportunity Commission, is represented by Michael C. McGoings, Esq., of the Equal Employment Opportunity Commission.

j. FREDDIE G. HOLT, formerly acting district director of the New York District Office of the E.E.O.C., is represented by Michael C. McGoings, Esq.

k. RALPH MUNOZ, Esq., is an employee of the E.E.O.C. NY District Office, and is represented by Michael C. McGoings, Esq.

l. VINCENT DONATO is an employee of the E.E.O.C. NY District Office, and is represented by Michael C. McGoings, Esq.

m. KASINE WALKER is an employee of the E.E.O.C. NY District Office, and is represented by Michael C. McGoings, Esq.

n. AL KERSEY is an employee of the E.E.O.C. NY District Office, and is represented by Michael C. McGoings, Esq.

o. MAXINE ARCHER is a former employee of the E.E.O.C. NY District Office, and is represented by Michael C. McGoings, Esq.

p. THOMAS W. BARRON, whose last disclosed address is c/o The Personnel Director, New York State Division of Human Rights, 270 Broadway, New York, NY 10007, is a former hearing officer for the New York State Division of Human Rights, Queens Office, Queens, New York, N.Y.

q. JOHN/JANE DOE are persons presently unknown to Plaintiff who also participated in the acts complained of.

r. All the foregoing individuals are sued in their individual capacities.

s. Plaintiff has a subsequent action to the instant action, 75 Civ. 3840 (EW) in which some of the above-named defendants are also named, and in which the United States is being sued, for unlawful acts committed by federal officials and employees.

FACTS & ALLEGATIONS

8. Plaintiff has publicly advocated integration, religious freedom, sexual equality, equal opportunity, nonaggression, and is a foreign-born United States citizen of ambiguous race, religion, ethnic origin, and sex, through self-proclamation as integrated, free thinker, nonethnic, and unisex. It is alleged that the protection of Title VII and other Civil Rights Statutes extend to all persons equally regardless of race, religion, ethnic origin, and sex, and hence extend also to Plaintiff and her class of ambiguous persons.

9. It is further alleged that militant groups of every faction discriminate and take violent action against Plaintiff's ambiguous class, and that each of these factions conspires, or sometimes co-conspires with some other faction(s) to interfere with Plaintiff's civil rights by grouping Plaintiff with classes of persons to which it is an opposite. Thus Plaintiff has been persecuted as "black," "gay," "atheist," "pacifist," "communist," "radical" by one or another of these elements among which are numbered the extremist organizations known as the Ku Klux Klan, violent Black, Gay, Catholic, Jewish, Italian, Nazi, Communist militants, and the communities which surround them and fall prey to their propaganda.

10. It is further alleged upon frequent information in the public press that significant segments of our national and international security network is

from time to time controlled by one or another of these radical elements, and that persons of Plaintiff's class have recently fallen prey to the unlawful misuse of our national and international security system.

11. Plaintiff claims membership in the class action presently before Judge June Greens, 75 Civ. 1773, U.S.D.C./ District of Columbia, Halkin et al. -v- Helms et al.; and alleges she suffered repeated intrusions of privacy due to improper counterintelligence actions and files, initiated by the New York Office of the Federal Bureau of Investigation sometime in 1967 and ultimately coordinated with the national Special Operations Group within the Central Intelligence Agency known as "Operation CHAOS."

12. In the instant action Plaintiff alleges that individuals employed by BHE, PSC, and New York State Division of Human Rights and the Equal Employment Opportunity Commission New York District Office acted unlawfully to cover up the damaging actions and other invasions of privacy earlier conducted, as described in 11 above, and that this was not a lawful and proper performance of their duties even upon instruction from superiors, and that some of these actions constitute counterintelligence actions against a United States citizen within the United States and are therefore also unconstitutional.

13. Plaintiff is a member of the class of women scholars employed by BHE and was for a time, in the period 1973, a member of CUNY Women's Coalition, and actively participated in research for the class action later brought by the Coalition against BHE through the VLADECK firm, which coordinated the investigation of complaints filed with the E.E.O.C. NY District Office. And Plaintiff also filed a complaint and was represented by the VLADECK firm at that time as a member of the intended class action.

14. Plaintiff's E.E.O.C. grievance was misplaced and misprocessed by persons responsible to Judith P. Vladeck, resulting in a crucial delay of some months and her exclusion from the initial group of cases to be immediately investigated by the E.E.O.C. and litigated in U.S.D.C./S.D.N.Y. This delay, coupled with further inefficiencies and improper advice, greatly damaged Plaintiff's ability to litigate effectively against BHE, and upon information and belief it is alleged that this delay was willful and part of a cover up conspiracy; the Court has pendant jurisdiction over this issue, under Title VII.

15. In Spring/Summer 1972, Plaintiff was not rehired as college teacher by Queensborough Community College/C.U.N.Y. or any other division of C.U.N.Y., in violation of union contract, due to discrimination and cover up, and continues to be unlawfully excluded from rehiring programs within C.U.N.Y., due to discrimination and cover up, in violation of Title VII.

16. Plaintiff's representation by the PSC grievance counselor, Anthony DeMealas, at Arbitration before Arbitrator Milton Rubin in Summer 1973 was knowingly and willfully inadequate, in presentation of evidence, witnesses, presence of Plaintiff at all proceedings which was denied her, and in the bringing of sufficient charges against BHE; the issue of discrimination or of academic freedom was not brought before the Arbitrator, and this is a violation of Title VII and union contract.

17. The determination of lack of probable cause handed down by the Equal Employment Opportunity Commission on Plaintiff's various grievances filed in the period Fall 1973/Spring 1975, dated August 1, 1975, is in neglect of law and weight of evidence, and is further grossly inaccurate with regard to the statement of recorded facts, and handed down without obtaining testimony from Plaintiff's voluntary witnesses, and the Court has therefore jurisdiction to review all the evidence under Title VII.

18. On information and belief and the weight of recorded evidence and further circumstantial evidence, it is alleged that Arthur W. Stern and Thomas W. Barron of the New York State Division of Human Rights, and Arthur W. Stern (same party), Freddie G. Holt, Ralph Munoz, Vincent Donato, Kasine Walker, Al Kersey, Maxine Archer, John/Jane Doe, employees of the New York District Office of Equal Employment Opportunity Commission, conspired with John/Jane Doe other federal employees or members of organized crime or friends of theirs to

whom they owe allegiance, to fail to prevent a conspiracy to interfere with Plaintiff's civil rights, in violation of both Title VII (interfering with an E.E.O.C. investigation and retaliation for filing an E.E.O.C. complaint), and 42 U.S.C. Section 1985, and other civil rights statutes, and other sections of the U.S.C. protecting Constitutional rights from federal transgressions.

19. On a number of occasions between 1973 and 1975, Chancellor Robert Kibbee or his direct subordinates have investigated and made reparations to persons able to give testimony for Plaintiff's grievances and caused these persons to sign a document preventing them from giving voluntary testimony against BHE, resulting in a suppression of voluntary testimony for Plaintiff.

20. On information and belief, David Newton, formerly a Vice Chancellor, assisted Robert Kibbee in cover up and discreditation of Plaintiff through acts which violated union contract, and the First Amendment.

21. A co-worker of Plaintiff's met a violent death in 1972 for reasons as yet not fully determined, which may have relevance to the explanation of the intensity of cover up of Plaintiff's grievances.

22. Plaintiff is also a co-researcher since 1964 with various groups engaged in behavior-modification research, including hallucinogenic research and electrode-implantation research for the control of violence and other neuro-physiological disorders; and upon information and belief came to be rejected for inclusion in criminology research for which academic sponsors had recommended her, as well as for other behavior-modification research; and the research programs in question have since been branded racist and fascist by some civil rights groups and have ceased to be funded by the National Institutes of Health; and some of this research has now been removed to foreign countries which are centers for training security personnel. Upon information and belief, some of Plaintiff's academic advisors are still connected with these projects.

23. On information and belief and record, Executive Officer Abraham Edel took a principal role in coordinating BHE and PSC and VLADECK cover up of Plaintiff's union grievances, and further also took part in the original conspiracy within Queensborough and the Graduate Center to interfere with Plaintiff's rights as college student and teacher to equal opportunity in education and employment, by (a) discouraging faculty from sponsoring or hiring Plaintiff, (b) by encouraging faculty to report on Plaintiff's litigation strategies, (c) by spreading rumors that Plaintiff was a militant and a poor student, (d) by withholding information and documents testifying to Plaintiff's academic and professional competence from Plaintiff's would-be sponsors and advisors.

FIRST CAUSE OF ACTION

24. Plaintiff's nonreappointment at Queensborough in 1972 violated her right to equal employment opportunity as protected by Title VII, two successive union contracts, and the First Amendment.

25. No res judicata from Arbitration exists on this issue.

SECOND CAUSE OF ACTION

26. Failure of PSC to charge discrimination and abridgement of academic freedom at Arbitration was an act of improper representation of Plaintiff due to discrimination, also forbidden under Title VII and union contract, and further was part of a conspiracy to interfere with Plaintiff's civil rights, and also part of a conspiracy to interfere with her union activities forbidden by the Taylor Law and the National Labor Relations Act.

THIRD CAUSE OF ACTION

27. Failure of the VLADECK firm to give Plaintiff proper representation was an act of malpractice over which the Court has pendant jurisdiction, and was part of a conspiracy to interfere with Plaintiff's civil rights.

FOURTH CAUSE OF ACTION

28. The Court has a right under Title VII to review the determination of August 1, 1975 by the Equal Employment Opportunity Commission which was arrived at in neglect of law and weight of evidence and with further gross negligence in the collection and examination of facts, records and testimony; a right-to-sue from the Justice Department is on file with the Clerk of the Court.

FIFTH CAUSE OF ACTION

29. The voluntary acts of Defendants Judith P. Vladeck, Anthony DeMezlas, Abraham Edel, David Newton, Robert Kibbee, Arthur W. Stern, Freddie G. Holt, Ralph Munoz, Vincent Donato, Kasine Walker, Al Kersey, Maxine Archer, Thomas W. Barron, John/Jane Doe, done directly to suppress evidence, discourage, bribe, or otherwise prevent witnesses from testifying for Plaintiff, to alter or misplace records, neglect professional duties and their timely performance, all constituted acts which were part of a conspiracy to cover up and to continue to interfere with Plaintiff's civil and Constitutional rights, in violation of either Title VII or 42 U.S.C. Section 1985 or other civil rights statutes and the First Amendment.

SIXTH CAUSE OF ACTION

30. The involuntary acts of all the individual Defendants herein also violated Title VII, 42 U.S.C. Section 1985, other civil rights statutes, and the First Amendment, since these were not part of a regular performance of duties.

SEVENTH CAUSE OF ACTION

31. The corporate acts of Defendants BHE and PSC violated Title VII, two union contracts, and federal labor statutes and state statutes outlawing conspiratorial acts between employers and labor unions, against individual members of the collective bargaining unit actively engaged in union activities. Specifically it is alleged that these Defendants and the VLADECK firm freely exchanged confidential information regarding Plaintiff without Plaintiff's knowledge or consent and with effects that were damaging to Plaintiff's successful litigations against BHE and PSC and the E.E.O.C. investigation.

EIGHTH CAUSE OF ACTION

32. Plaintiff has another set of issues to be tried against Defendant BHE under 75 Civ. 186 (EW) consolidated with the instant action, which demonstrate a prolonged and widespread pattern of discrimination against Plaintiff in violation of other civil rights statutes.

NINTH CAUSE OF ACTION

33. Plaintiff has another set of issues to be tried against some of the same corporate and individual Defendants herein and other federal defendants, under 75 Civ. 3840 (EW) consolidated with the instant action, which further demonstrate a prolonged and widespread pattern of discrimination against Plaintiff in violation of 42 U.S.C. Section 1985 and other civil rights statutes.

TENTH CAUSE OF ACTION

34. The continued and widespread exclusion of Plaintiff from academic programs and academic employment and other significant employment, despite academic evaluations that describe her as "suited to teach Philosophy on the graduate level," "highly intelligent," "recommended without qualification," applicant with "superior qualities," "remarkably learned," "ambitious and dedicated," "a warm and outgoing person of very rare qualities of character," "a mature and extremely talented woman," from scholars and professionals of international reputation, and despite being highly qualified in academic achievement and professional record of past employment, and despite her eligibility for job preference under affirmative action as female and under other categories due to her unspecified race, religion, and ethnic origins, is an inexplicable fact other than when viewed as continuing violations of Title VII by persons willfully and flagrantly breaking the law.

ELEVENTH CAUSE OF ACTION

35. Plaintiff's continued exclusion from academic programs and academic and other professional employment even while other members of Plaintiff's ambiguous class who are female are witnessing an elimination of discrimination under present affirmative action programs, is evidence that Plaintiff's continued exclusion demonstrates a pattern of retaliation and conspiracy directed specifically against Plaintiff, rather than against Plaintiff as member of her class, and this further fact is also in violation of Title VII and 42 U.S.C. Section 1985 and other civil rights statutes and the First Amendment.

WHEREFORE, Plaintiff requests that the Court grant the following relief:

A. A declaratory judgment that the course of conduct and activities of the defendants set forth above are illegal and unconstitutional.

B. That the Court immediately remand to a Grand Jury those issues the investigation of which might imperil the lives of any persons who are parties herein or in any of the other actions consolidated with this action.

C. Reappointment as adjunct lecturer and reinstatement as doctoral student within The City University of New York or a comparable other institution of higher learning, on the same terms of financial support and subsidy as were due Plaintiff in Fall 1967 and thereafter if she had been awarded scholarships, fellowships, and employment for which she was most qualified.

D. A mandatory injunction or writ of mandamus ordering the Defendants to produce before the Court for delivery to Plaintiff all files, reports, records, photographs, data computer tapes and cards, and all other materials derived from Defendants' illegal and unconstitutional activities relating to Plaintiff or any of her immediate co-workers and teachers or union representatives, for the purpose of use at trial and before a Grand Jury.

E. All back salary and litigation costs due Plaintiff.

F. A judgment against each defendant in a sum to be determined by the Court for violation of Plaintiff's civil rights and Constitutional rights.

G. Recovery in the amount of \$1,000,000 in punitive damages for the willful violation of Plaintiff's civil and Constitutional rights.

H. Such other and further relief as the Court shall deem just and proper.

New York : New York

Dated April 3, 1976

Respectfully submitted:

Anna Selma Vinje Morpurgo
ANNA SELMA VINJE MORPURGO, pro se
Box 1091, Sag Harbor, NY 11963
(516) 725 1414

TO: Judith P. Vladeck, Esq., Attorney for
PROFESSIONAL STAFF CONGRESS/CUNY, Anthony De Meelas, Judith P. Vladeck

Rosemary Carroll, Esq., Attorney for
BOARD OF HIGHER EDUCATION N.Y.C., Abraham Edel, David Newton, Robert Kibbes

✓ Michael C. McGoings, Esq., Attorney for ✓
Ralph Munoz, Freddie G. Holt, Vincent Donato, Al Kersey, Kasine Walker,
Maxine Archer, Arthur W. Stern

Thomas W. Barron, c/o Personnel Director, New York State Division of
Human Rights, 270 Broadway, New York, NY 10007

Clerk of the Court

ANSWER TO FIRST AMENDED COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
:
ANNA SELMA VINJE MORPURGO, :

Plaintiff, :

-against- :

75 CIV 4913 (EW)

PROFESSIONAL STAFF CONGRESS/CUNY and the
law firm of VLADECK, ELIAS, VLADECK &
LEWIS, and BOARD OF HIGHER EDUCATION IN
CITY OF NEW YORK, and ABRAHAM EDEL, DAVID
NEWTON, ROBERT KIBBEE, JUDITH P. VLADECK,
ANTHONY DE MEALAS, THOMAS W. BARRON, RALPH
MUNOZ, FREDDIE G. HOLT, ARTHUR W. STERN,
VINCENT DONATO, AL KERSEY, KASNINE WALKER, :
MAXINE ARCHER, JOHN/JANE DOE, :

ANSWER TO FIRST
: AMENDED COMPLAINT

Defendants.
-----x

Defendant, Professional Staff, Congress/CUNY, for its
answer to the First Amended Complaint, by its attorney, D. Nicholas
Russo:

FIRST: Denies each and every allegation contained in
paragraphs numbered "1", "5", "12", "16", "26", "29", "30",
"31", "34" and "35" of the First Amended Complaint.

SECOND: Alleges that it is without knowledge or information
sufficient to form a belief as to the truth of the allegations
contained in paragraphs numbered "2", "3", "6", "7c", "7f"
through "7s" inclusive, "8", "9", "10", "11", "13", "15", "17",
"18", "19", "20", "21", "22", "24", "25", "27", "28", "32", and
"33" of the First Amended Complaint.

THIRD: Denies each and every allegation contained in paragraph numbered "7a" of the First Amended Complaint except admits that from time to time Vladeck, Elias, Vladeck & Lewis, acting through Judith P. Vladeck, or others associated with such firm, represented this answering defendant.

FOURTH: Alleges that it is without knowledge or information sufficient to form a belief as to the truth of so much of the allegations contained in paragraph numbered "7b" of the First Amended Complaint as alleges that Vladeck, Elias, Vladeck & Lewis occasionally acted as attorneys for AFL/CIO and CUNY Women's Coalition.

FIFTH: Alleges that it is without knowledge or information sufficient to form a belief as to the truth of so much of the allegations contained in paragraph numbered "14" of the First Amended Complaint as alleges the misplacement and misprocessing of plaintiff's alleged E.E.O.C. grievance by persons responsible to Judith P. Vladeck resulting in alleged delay to plaintiff and her alleged exclusion from cases investigated by the E.E.O.C. and litigated in this Court and, except as so denied, denies each and every other allegation in said paragraph contained.

SIXTH: Denies so much of the allegations contained in paragraph numbered "23" of the First Amended Complaint as alleges that this defendant played any part in covering up any of plaintiff's

Union grievances and, except as so denied, alleges that it is without knowledge or information sufficient to form a belief as to the truth of all the other allegations in said paragraph contained.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

SEVENTH: The First Amended Complaint fails to state a claim against this answering defendant upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

EIGHTH: That at any time this answering defendant should have, or was required to represent, act, and/or take any action on plaintiff's behalf it did so and rendered plaintiff fair, adequate, and proper representation, acted at all times in good faith in the exercise of its sound judgment and it rendered service to plaintiff in a competent and efficient manner.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

NINTH: Plaintiff has failed to state any basis for this Court's jurisdiction insofar as this answering defendant is concerned.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

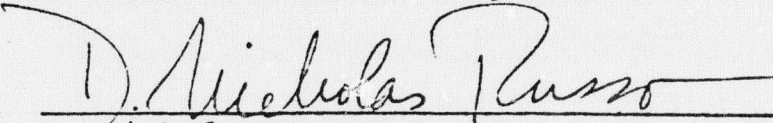
TENTH: That if plaintiff suffered any damages or injuries, they were caused in whole or in part, or were contributed to by her negligence, fault, want of care, and without any negligence, fault or want of care or any other improper action on the part of this answering defendant.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

ELEVENTH: That any cause of action set forth in the First Amended Complaint as against this answering defendant did not accrue within the time limitation provided before the commencement of this action and is barred by the applicable statute of limitations.

WHEREFORE, this defendant demands judgment dismissing the Complaint, together with the costs and disbursements of this action.

D. NICHOLAS RUSSO
Attorney for Defendant
Professional Staff Congress/CUNY



D. Nicholas Russo
Office & P. O. Address:
25 West 43rd Street
New York, New York 10036
Tel. No. (212) 354-1252

PLAINTIFF'S DEPOSITION AND SUPPORTING AFFIDAVIT
IN ADVANCE OF DISCOVERY, REGARDING COMPLAINT
AGAINST THE VLADECK DEFENDANTS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ANNA SELMA VINJE MORPURGO,
Plaintiff,

75 Civ. 4913 (E4)

-v-

PROFESSIONAL STAFF CONGRESS/CUNY,
et al.,
Defendants.

PLAINTIFF'S DEPOSITION AND
SUPPORTING AFFIDAVIT IN ADVANCE
OF DISCOVERY, REGARDING COMPLAINT
AGAINST THE VLADECK DEFENDANTS

-----X
STATE OF NEW YORK)

: SS.:

NEW YORK COUNTY)

ANNA SELMA VINJE MORPURGO, being duly sworn,

deposes and says:

(1) I am the Plaintiff in this action and I make this deposition as a supporting affidavit, in advance of exercise of my right to Discovery, regarding the complaints against the VLADECK Defendants and in Reply to their First set of Interrogatories.

(2) I will set down in chronological order the events pertinent to my complaint against the VLADECK Defendants, attaching relevant Exhibits hereunder.

(3) On the basis of information from PSC grievance counsellor Anthony DeMealas, I was introduced to Steven Vladeck at Step II of my UFCT grievance against BHE, who was allegedly present at the hearing held before David Newton at BHE Headquarters, 535 E. 80 Street, NYC sometime in early Fall 1972. The function of Mr. Vladeck at that hearing is not clear to me, as I was in contact only with Mr. DeMealas during that time and had no expertise in legal matters and had placed myself entirely in the hands of the union's grievance representatives.

(4) I do not remember whether I met with Mr. DeMealas prior to that hearing, but if I did it was only briefly, or perhaps only through a brief telephone interview with him, and I was given little if no opportunity to discuss my case in advance of the hearing. I attempted to alert him to the fact that my grievance related to academic freedom, regarding religious discrimination and retaliation in employment at QCC, primarily from devout Catholics and Orthodox Jews who resented my feminist and atheist views.

(5) At the hearing before David Newton, Mr. DeMealas and the UFCT attorneys accompanying him (one of whom is presumed to have been Steven Vladeck), failed to make sufficiently clear to the BHE representatives that my complaint was more than mere sex discrimination and involved retaliation for exercise of First Amendment rights in a Philosophy of Religion Course, and other courses I taught at QCC. I asked Mr. DeMealas to briefly stop the discussion and permit me to confer with him and the UFCT attorneys in private for a few minutes in order to clarify the nature of my grievance. To the best of my recollection, Mr. DeMealas and the UFCT attorneys refused to do this and instructed me to say what I wished to say right there, before the BHE representatives; whereupon I stated to David Newton and the other BHE representatives that it was my belief that the militant religious factions at QCC had been turned against me by members of the QCC Philosophy and other Social Science faculty who were threatened by my presence at QCC, since I knew too much about their interest in mysticism and LSD; THAT my students had reported to me that a Dean was encouraging them to smoke pot to induce religious experience, and that I had issued a public warning in my classes that I would expose such faculty if they continued to influence the student body to smoke pot or take drugs; further, that as a scientific realist and epistemologist, I strongly opposed mystical trends in Philosophy and was winning too many converts to science among previous converts to mysticism.

(6) Whereupon David Newton asked me to name faculty presumed to be retaliating against me for the exercise of my First Amendment rights, and I gave a list of persons who appeared to be hostile to my presence in the Department, for whatever reasons, unknown to me, which they might have had.

(7) The BHE representatives, to the best of my recollection, then brought up the question of my academic competence which had been challenged by one of the QCC observers, Dr. Edwin Seltzer. I in turn challenged Dr. Seltzer's competence on the question of Aristotle, which was the subject of our academic dispute, and indicated my willingness to immediately point out errors and deficiencies in his knowledge of Aristotle with regard to his evaluation of my lecture. I was not permitted to do this on the spot, and a Stop-the-Clock

action ensued, for a couple of months, during which time I was given the opportunity to read Dr. Seltzer's evaluation at BHE Headquarters and to give academic replies to his objections to my lecture. (Before the Arbitrator Milton Rubin, Vice Chancellor David Newton specifically denied that I was not being reappointed on grounds of academic incompetence and the Board upheld the evaluation of Dr. Evelyn Petersen of QCC which found me "better suited to teach Philosophy on the graduate level.")

(8) To the best of my recollection, I failed to be present at the reconvening of the Step II hearing because, the time I attended, the hearing was put off due to an overload of other cases heard before me; the next time it was scheduled I was notified by Mr. DeMealas that I did not need to attend. EXHIBIT A. Throughout this time I indicated to Mr. DeMealas that I had student and faculty witnesses who were anxious to appear on my behalf, but he told me these would be useless at that stage of the grievance procedure.

(9) During Fall 1972 I met Mr. DeMealas at the Graduate Center Commons, where he apparently knew and was a co-worker on some political or union matters with Abraham Edel and Andrea Cooperman, the other student representative on the Faculty Research & Membership Committee, to which I had been elected, and I continued to see him occasionally in their company through Summer 1973.

(10) My contact with the CUNY Women's Coalition and with Mrs. Judith P. Vladeck, wife and partner of Steven Vladeck, occurred through another UFCT and then PSC grievance counselor, Lelia Melani of Brooklyn College:

a. In Fall 1971, when I began to realize that QCC Philosophy faculty who were friends of Abraham Edel and other members of the Graduate Center Philosophy faculty, especially Gerald Myers, were assuming a negative attitude toward my teaching at QCC and my continuing as a student at the Graduate Center, I tried many times to find out who the UFCT representative was on the QCC campus, without success. I did not belong to the union because I could not afford the dues. I contacted the New York Office of National Organization for Women seeking advice and was referred to Ms. Dee Alpert of that office who sent me to Ms. Lelia Melani as her UFCT contact at CUNY.

b. In my interview with Ms. Alpert, I mentioned my alternate identity in the arts as Artemis Smith and indicated my willingness to cooperate with the women's movement as an artist, especially since I was being done out of jobs in the academic community and needed to find new avenues to further my career. I further mentioned that I thought I might be being blacklisted for having been associated with a number of organizations in the early sexual liberation movements and the fact that I had openly declared myself a bisexual at that time, in sympathy with gay civil rights movements, even though I was not gay.

c. Sometime during the Spring 1972 semester I was finally able to get hold of Ms. Melani and she scheduled a meeting with me at the Graduate Center commons. When I arrived she was in the company of CUNY Women's Coalition members Dr. Paulette Roy, Professor Gertrude Ezorsky (Philosophy - Brooklyn College and the Graduate Center), and Audrey Silva, of the administrative staff at QCC. I had approached Ms. Melani for help in finding the QCC grievance counselor for UFCT and for advice on the question of religious retaliation, which Ms. Alpert had said Ms. Melani knew a good deal about. However the meeting was devoted primarily to CUNY Women's Coalition business and as a result of my being seen in association with these persons in the Graduate Center commons by Gerald Myers and Abraham Edel, the word was quickly spread throughout the academic community at the Graduate Center that I had joined the Coalition. I was harassed by students and faculty for being a member; I decided to join the Coalition to protect my civil rights against such harassment and further retaliation.

d. Shortly after that, I was finally contacted by the proper UFCT - QCC grievance representative, Mr. Newton Nelson. I do not know whether this was through Ms. Melani or through friends of mine at QCC who were also trying to find out who I should contact on my behalf. Mr. Nelson and Mr. Harold Stollerman, I believe, carried my grievance through Step I of the UFCT grievance procedure, in a hearing before Eleanor Pam, Dean at QCC, to whom they submitted proof of my teaching competence in the form of student evaluations, papers, grades, rolls and enrollment statistics, and support from fellow faculty.

e. In early Summer of 1972, UFCT merged with the other collective bargaining unit, Legislative Conference, creating Professional Staff Congress/CUNY (PSC). Mr. Nelson resigned in protest and I was assigned Mr. DeMealas as my new grievance representative (I did not know of Mr. Nelson's resignation at that time).

f. During that same period, to the best of my recollection, I was told by Coalition members, including Paulette Roy, that Dean Eleanor Pam had been

removed as Dean at QCC by President Kurt Schmeller on some charge of embezzlement. In Fall of 1973, I contacted Dean Pam to obtain more information about this and she confirmed the fact and informed me that she had been personally cleared by the Chancellor, Robert Kibbee and given another post at CUNY. Ms. Audrey Silva, Coalition representative for QCC, was her secretary at QCC. I tried to determine from Dean Pam during my conversation with her the precise whereabouts of all the supporting materials Mr. Nelson had submitted to her on my behalf at Step I of the grievance procedure; she said she had forwarded these materials to the QCC P&B Committee and could give no further account of their whereabouts. None of these materials were presented to the Arbitrator Milton Rubin, despite my making reference to them at Arbitration, and Mr. DeMealas did not take any action to compel their presentation at Arbitration.

g. It should be further noted that the Coalition's first permanent offices within CUNY were located at QCC, through the personal efforts of Kurt Schmeller and Audrey Silva, in 1973.

February 1972,

(11) Around ~~February 1972~~ (EXHIBIT B), at the suggestion of Paulette Roy of the Coalition and also because I had been planning to do it on my own for quite some time, I made a motion as student representative of the Philosophy Division's Faculty Membership & Research Committee, that I collect information about women faculty in Philosophy employed or seeking employment within CUNY, for the purpose of seeing ~~if~~ whether they were qualified for promotion to the Doctoral Faculty. This motion was passed with most of the Committee members abstaining from the vote. Faculty Committee members were Abraham Edel, Gerald Myers, Stephan Baumrin, Charles Landesman; Student Members as listed in memoranda (EXHIBIT C) were myself, Mark Weinstein, Howard Wettstein. However, the only regular student member who attended our Committee meetings and was represented to me as a member was another student, Andrea Cooperman, friend and co-worker of DeMealas, who gave me defamatory information against Gertrude Ezorsky and Marshall Cohen of the Philosophy Doctoral faculty, relating to a student grievance of a male student in the program, and defamatory information against Linda McAlister as a teacher. I failed to take any action on this information at that time, seeking to investigate the matter further, and found myself accused by fellow students of defending Coalition and Feminist faculty who were professionally incompetent. I finally challenged Professor Ezorsky to answer to these defamatory charges in a public letter in early Fall 1973, with the result that I was totally cut off from all support from the Women's Movement. (EXHIBIT D)

sometime in

(12) Concurrently, ~~in March~~ 1972, Lelia Melani presented Judith P. Vladeck to the Coalition as the attorney who had consented to represent the Coalition in its class action against CUNY. Ms. Vladeck gave a speech at the Graduate Center which I attended as Coalition member, during which she strongly urged us to gather information by academic category, since it was easier to prove discrimination within a discipline rather than through an overall action against an institution. I spoke up and mentioned my being the student representative for the Philosophy Discipline, and further a member of Society for Women in Philosophy which organization was obtaining facts on discrimination in the Philosophy discipline. I volunteered to coordinate information between SWIP and the Coalition for the class action, and my suggestion was eagerly received by Ms. Vladeck and the Coalition members attending the meeting. I immediately proceeded to act on this strategy, by making a motion which was passed at a SWIP meeting to gather such information to aid the Coalition. This information was to be preliminarily gathered by Sue Larson of Barnard College (whose Department Chairman was Mary Mothersill), and was later forwarded to Linda McAlister for the Coalition, although I was supposed to be the person receiving this information, as having been delegated to do so, presumably because by the time it was gathered I was no longer connected to CUNY Philosophy.

(13) Throughout 1972 and afterwards I suffered intense harassment both at QCC and at the Graduate Center as a "feminist" and was repeatedly urged by Coalition members to file an E.E.O.C. grievance through the Vladeck firm, as part of the original class action. I finally did so in April of 1973, forwarding my E.E.O.C. charge to the Vladeck office to Mrs. Vladeck and her assistant, Deborah Watarz together with a bill of particulars. I submitted copies of that bill of particulars to Lelia Melani, Anthony DeMealas, and Professor Virginia Held who had been recommended by Professor Mary Mothersill as the SWIP representative in CUNY Philosophy; I later also submitted one to Dee Alpert and the E.E.O.C.

(14) In April 1973 I called Ms. Vladeck to obtain legal advice regarding (a) what I should do to safeguard my rights in the Philosophy Doctoral Program as a student suffering labor retaliation in education; she advised me that there was nothing I could do except wait for an EEOC investigation; (b) what I should do about obtaining materials in my student file alluded to by Abraham Edel as

being highly detrimental to me (EXHIBIT E); she advised me to wait for the EEOC.

(15) In late September 1973, upon prompting by other Coalition members, I filed my own grievance with the EEOC, and was sent away by Mr. Peter Holland of the NY-EEOC Office to learn the file number used by the Vladecks for cross-reference. Upon calling the Vladeck office, I was delayed for about four days in obtaining this information and was given the file number TNY 4-0406. Whereupon I returned to the EEOC-NY Office and filed my own complaint with Thomas Crown, TNY 4-0435 and TNY 4-0436, against both QCC and the Graduate Center, and a collateral class action on behalf of the Philosophy Discipline, TNY 4-0434, to send to the Coalition Philosophy members and SWIP members and persons who had contacted me as student representative researching affirmative action in the Philosophy Division. I learned from Mr. Crown that the previous charge had been filed by Ms. Watarz of the Vladeck Office only two days prior to mine. I wrote Mrs. Vladeck about this and obtained an admission that a clerical error had indeed taken place. (EXHIBIT F) The error, according to Dee Alpert, was supposed to have been committed by Judy ____, Mrs. Vladeck's secretary.

(16) From April through October of 1973 I continued to send materials to Mrs. Vladeck, believing her to be my attorney and seeking as much help from her as possible to alleviate the condition of harassment in education, employment, and other harassment, which were destroying me financially. She took no action in my behalf and gave me only assurances that I was being properly represented by the union at Arbitration (she had no access to any documentation of this, to the best of my knowledge, but only the assurance of Anthony DeMealas), and that nothing could be done until the EEOC investigation. (EXHIBIT G)

(17) In Fall of 1973 I learned from Dee Alpert, Lelia Melani, and Paulette Roy that I was not included in the class action filed by the Vladeck firm as a named party of the class, and this was confirmed by Mrs. Vladeck. The reason she gave was that my case was not representative of the class. This was an immense surprise to me, since I had consented to remain with Mr. DeMealas through Arbitration on the assumption that the Vladecks were taking my case to Court; this decision resulted in my not taking the case to Court myself at a more timely instant, which would have been in January 1973 upon receipt of the unfavorable decision at Step II of the grievance procedure.

(18) Mr. DeMealas represented me at Arbitration before Milton Rubin at AAA Offices in NYC in ~~xxxxx~~ June-August 1973 (hearing was June 11). He advised me that the union would not take up the charge of discrimination at Arbitration because it was useless to do so in advance of the EEOC investigation. I consented on the telephone, but at the hearing, when I learned the position of BHE, I voiced my intent to withdraw from Arbitration and take the matter directly to Court. Mr. DeMealas concurred and said he would speak to the Vladecks. Arbitration was adjourned, but it was my understanding that a new hearing would be held before any further actions were taken, at which time the charge of discrimination would be re-introduced and I would bring witnesses and documentation. No new hearing was convened, and the Arbitrator arrived at his decision without reopening Arbitration. I frequently telephoned PSC offices to reach Mr. DeMealas to obtain information on the new hearing or the decision of the Vladecks. When I finally was able to get him on the telephone, in late August, he told me the Vladecks had refused to take the matter to Court and that it was too late to re-convene Arbitration because the Arbitrator had already made his award, which was unfavorable to me.

(19) A friend of mine who was a good friend of Morris J. Stone, Vice President of AAA, brought Mr. Stone to my house in Sag Harbor, where he graciously offered to read Mr. Rubin's Award, and pointed out several glaring irregularities which he promised to take up with Mr. Rubin. Our mutual friend reported to me that Mr. Rubin's reply was that, since no additional charges of discrimination had been brought up, he had no recourse but to rule for BHE. Mr. Stone personally knew and recommended Mrs. Vladeck as an attorney most capable to deal with this matter. I informed Mrs. Vladeck of Mr. Stone's expert advice in the same letter I alerted her to the extreme delay in the filing of my EEOC grievance. (EXHIBIT F above is her reply.) I learned from my mutual friend that my letter to Vladeck somehow had gotten circulated throughout the entire municipality, causing Messrs. Stone and Rubin, and Ms. Vladeck, some embarrassment.

(20) In December 1973, I took steps to engage a new attorney but found that I had surpassed the 90-day limit for appeal of Arbitrator's decisions. At the advice of a counselor at NYS Division of Human Rights, I filed a grievance against PSC with Public Employment Relations Board of New York State, where I settled with ESC in exchange for access to files and some important admissions (EXHIBIT H) which would help me with the EEOC, my only other real recourse at that point, since the Division's investigative procedures were negligent.

(21) In Spring 1974, when PSC failed to comply with the terms of its PERB Agreement with me, I filed a new charge with PERB, which Mr. Cole Pitcher of that office refused to docket because it was out of PERB's jurisdiction.

(22) I never signed the verification of charge on TNY 4-0406 but returned it with a letter to Mr. Frank Patterson, EEOC-NY Case Control, with an explanation, and re-filed TNY 460406 giving an amended charge. (EXHIBIT I) ~~At the PERB hearing, I learned from Ms. Jean Roane and Mr. Arnold Cantor that my grievance should be filed on both sex and race discrimination grounds. I had, throughout this time and as a matter of course, also been working for affirmative action for nonwhites as well as for females; the matter of race discrimination had become obscured in my thinking because I was paying attention to all the matters connected with the women's movement at the Coalition and SWIP; I do not consider myself any less white than anyone else, but some persons have considered me nonwhite due to my sponsorship of black freedom movements in the 1960's, and my work with nonwhites as a college teacher.~~

At this time, this is all that I can recall as being pertinent information supporting my allegations against the VLADECK Defendants, in advance of Discovery.

Sworn to before me this

Day of June, 1976

ANNA SELMA VINJE MORPURGO
Pro Se
Box 1091, Sag Harbor, NY 11963
(516) 725 1414

TO: all counsel herein.

NOTICE OF MOTIONS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

ANNA SELMA VINJE MORPURGO,

Plaintiff,

-against-

PROFESSIONAL STAFF CONGRESS/CUNY, and the
law firm of VLADECK, ELIAS, VLADECK &
LEWIS, and BOARD OF HIGHER EDUCATION IN
CITY OF NEW YORK, and ABRAHAM EDEL, DAVID
NEWTON, ROBERT KIBBEE, JUDITH P. VLADECK,
ANTHONY DE MEALAS, THOMAS W. BARRON, RALPH
MUNOZ, FREDDIE G. HOLT, ARTHUR W. STERN,
VINCENT DONATO, AL KERSEY, KASNINE WALKER,
MAXINE ARCHER, JOHN/JANE DOE,

Defendants.

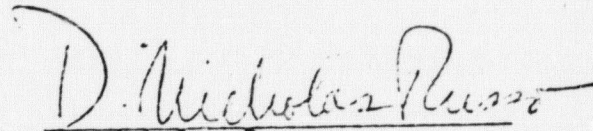
-----X

75 CIV 4913 (EW)

NOTICE OF MOTIONS

Please Take Notice that on Tuesday, the 6th day of July, 1976 at 2:15 p.m.
or as soon thereafter as the matter can be heard, in Room 518, before the
Honorable Edward Weinfeld, in the United States Court House, Foley Square,
New York City, Defendant Professional Staff Congress/CUNY will make its motion
for summary judgment, pursuant to Rule 56 of the Federal Rules of Civil
Procedure, against the plaintiff on the ground that there is no issue of
material fact to be tried and that defendant, Professional Staff Congress/
CUNY is entitled to judgment as a matter of law, and its motion to dismiss
Plaintiff's first amended complaint, pursuant to Rule 12 (b) (6) of the

Federal Rules of Civil Procedure, on the ground that the said complaint fails to state a claim upon which relief can be granted.

A handwritten signature in cursive script, reading "D. Nicholas Russo". The signature is written in dark ink and is positioned above the typed name and address.

D. Nicholas Russo
Attorney for Defendant,
Professional Staff Congress/CUNY
25 West 43rd Street
New York, New York 10036
(212) 354-1252

MOTION FOR SUMMARY JUDGMENT AND MOTION TO
DISMISS THE COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

ANNA SELMA VINJE MORPURGO,

Plaintiff,

-against-

PROFESSIONAL STAFF CONGRESS/CUNY, and the
law firm of VLADECK, ELIAS, VLADECK &
LEWIS, and BOARD OF HIGHER EDUCATION IN
CITY OF NEW YORK, and ABRAHAM EDEL, DAVID
NEWTON, ROBERT KIBBEE, JUDITH P. VLADECK,
ANTHONY DE MEALAS, THOMAS W. BARRON, RALPH
MUNOZ, FREDDIE G. HOLT, ARTHUR W. STERN,
VINCENT DONATO, AL KERSEY, KASNINE WALKER,
MAXINE ARCHER, JOHN/JANE DOE,

Defendants.

-----X

75 CIV 4913 (EW)

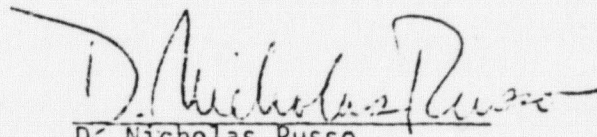
MOTION FOR SUMMARY
JUDGMENT AND MOTION
TO DISMISS THE
COMPLAINT

The defendant, Professional Staff Congress/CUNY, by its attorney, D. Nicholas Russo, hereby moves the court to enter summary judgment for the defendant, Professional Staff Congress/CUNY, in accordance with the provisions of Rule 56 of the Federal Rules of Civil Procedure, on the ground that the pleadings and affidavit and exhibits attached thereto show that there is no genuine issue of material fact and that said defendant is entitled to judgment as a matter of law. The defendant, Professional Staff Congress/CUNY, moves alternatively pursuant to Rule 12 (b) (6) of the Federal Rules of Civil Procedure, to dismiss the plaintiff's first amended complaint for its failure to state a claim upon which relief can be granted.

Wherefore, for reasons more fully stated in the supporting memorandum and affidavit, the defendant, Professional Staff Congress/CUNY, demands judgment

against plaintiff and that the first amended complaint of plaintiff be dismissed.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Dr. Nicholas Russo", with a long horizontal flourish extending to the right.

Dr. Nicholas Russo
Attorney for Professional
Staff Congress/CUNY
25 West 43rd Street
New York, New York 10036
(212) 354-1252

MEMORANDUM IN SUPPORT
OF DEFENDANT PROFESSIONAL
STAFF CONGRESS/CUNY'S
MOTION FOR SUMMARY JUDGMENT
AND MOTION TO DISMISS

Prior to April, 1972, the City University faculty were represented by either one of two unions, depending upon which title a faculty member held-- the Legislative Conference or the United Federation of College Teachers, (hereinafter UFCT). The latter union represented the plaintiff's title while she was employed as an adjunct lecturer. In April of 1972 these two unions merged into the Professional Staff Congress, which now represented the entire City University

instructional staff.

Until a faculty member achieves tenure, pursuant to the requirements of the New York State Education Law, he or she is subject to annual reappointments. Each constituent college of the City University has its own set of academic review committees which pass upon, inter alia, the reappointments of faculty members who do not hold tenure. It was through the operation of this academic reappointment process that the plaintiff did not receive reappointment for the academic year 1972-73.

The union (the UFCT in the early stage and the PSC at the latter stage) processed the plaintiff's grievance. While the United States Supreme Court has stated in Vaca v. Sipes, 386 U.S. 171, 191, 87 S. Ct. 903, 917 (1967), that "[t]hough we accept the proposition that a union may not arbitrarily ignore a meritorious grievance or process it in perfunctory fashion, we do not agree that the individual employee has an absolute right to have his grievance taken to arbitration..."

The PSC did, in fact, take the plaintiff's case to arbitration in a proceeding before an impartial arbitrator, Milton Rubin, who was on the labor panel of the American Arbitration Association. At page 3 of the opinion accompanying his award with respect to the plaintiff's grievance, the arbitrator stated, "The evidence submitted in the hearing, and the exhaustive reviews and arguments made in the briefs, were carefully studied." (emphasis added). The arbitrator denied the plaintiff's grievance.

While it is true that the union did not argue at arbitration that aspect of the plaintiff's grievance-allegations regarding discrimination, the decision to abandon these allegations (1) was done in recognition of certain contractual limitations impeding the union's ability to offer necessary proof to an arbitra-

tor (see the annexed affidavit of Arnold Cantor and exhibits attached thereto for a full explanation of these limitations); (2) was not prejudicial to the plaintiff's right to sue through the appropriate Equal Employment Opportunity Commission procedures, (see Alexander v. Gardner-Denver, 415 U.S. 36, 94 S.Ct. 1011, (1974)), where such limitations had no application; and (3) was made in good faith and not arrived at through "hostile discrimination" or based upon "irrelevant and invidious" considerations as the Supreme Court would require before liability would attach, (see Steele v. Louisville and N.R.R., 323 U.S. 192, 203, 65 S.Ct. 226, 232 (1944)).

Upon information and belief the plaintiff did file actions subsequent to the issuance of the said arbitration award before both the New York State Division of Human Rights and the United States Equal Employment Opportunity Commission. Presumably because she was displeased by the outcome of their actions, they have been added to this unit. Displeasure with determinations, however, does not form a sufficient basis for a claim. In her first amended complaint, the plaintiff has not met the requirements set forth by Judge Weinfeld in another action brought by this plaintiff, Morpurgo v. United States of America et al., 75 Civ. 3840 (S.D.N.Y., December 31, 1975). In his memorandum, Judge Weinfeld stated:

"[The] plaintiff does not, anywhere in her complaint, recite the interactions among the various defendants which constitute the purported 'conspiracy.' As the Court of Appeals has held, to adequately charge a conspiracy, a plaintiff must 'allege with at least some degree of particularity overt acts which were reasonably related to the promotion of the claimed conspiracy' Powell v. Workmen's Compensation Board, 327 F.2d 131, 137 (2d Cir. 1964). Thus, plaintiff's complaint fails to state a claim upon which relief can be granted and specifically fails to meet the standard set in Powell for allegations of conspiracy."

The Court continued:

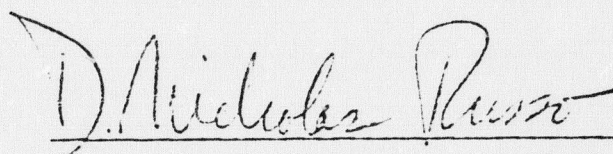
"Furthermore, as the Court indicated in a recent case brought by the same plaintiff, Morpurgo v. The Board of

Higher Education, 75 Civ. 186 (S.D.N.Y., Sept. 5, 1975), "[p]laintiff appears to be an educated person, and it is not unreasonable to require that she comply with the rules and draft a complaint that sets forth "a short and plain statement of the claim, showing that [she] is entitled to relief" Fed. R. Civ. P. 8 (a)."

The Court has given this plaintiff more than one opportunity to comply with procedural requirements. She has once again, in the instant proceeding, failed to meet her obligations as is apparent upon reading her amended complaint in this case.

Defendant Professional Staff Congress submits that the plaintiff has repeatedly failed to allege overt acts of conspiracy between the PSC and others because she cannot, since none exists. Plaintiff has only alleged conspiracy in conclusory terms, a conspiracy which exists only in her imagination and not in fact.

WHEREFORE, for the reasons stated herein, the defendant Professional Staff Congress/CUNY respectfully requests that this Court grant its motion for summary judgment against the plaintiff and its motion to dismiss the complaint.



D. Nicholas Russo
Attorney for Defendant
Professional Staff Congress/CUNY
25 West 43 Street
New York, New York 10036
(212) 354-1252

AFFIDAVIT OF ARNOLD CANTOR IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT IN FAVOR OF
DEFENDANT PROFESSIONAL STAFF CONGRESS/CUNY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

ANNA SELMA VINJE MORPURGO,

Plaintiff,

-against-

PROFESSIONAL STAFF CONGRESS/CUNY, and the
law firm of VLADECK, ELIAS, VLADECK &
LEWIS, and BOARD OF HIGHER EDUCATION IN
CITY OF NEW YORK, and ABRAHAM EDEL, DAVID
NEWTON, ROBERT KIBBEE, JUDITH P. VLADECK,
ANTHONY DE MEALAS, THOMAS W. BARRON, RALPH
MUNOZ, FREDDIE G. HOLT, ARTHUR W. STERN,
VINCENT DONATO, AL KERSEY, KASNINE WALKER,
MAXINE ARCHER, JOHN/JANE DOE,

Defendants.

75 CIV 4913 (EW)

AFFIDAVIT IN SUPPORT
OF MOTION FOR SUMMARY
JUDGMENT IN FAVOR OF
DEFENDANT, PROFESSIONAL
STAFF CONGRESS/CUNY

State of New York)ss.:
County of New York)

ARNOLD CANTOR, being duly sworn, deposes and says:

1. I am the executive director of the defendant Professional Staff Congress/CUNY (hereinafter "PSC") and I am fully familiar with the facts in this case.

2. The PSC is an unincorporated labor organization certified by the New York State Public Employment Relations Board (hereinafter "PERB") as the bargaining agent for members of the instructional staff at the City University of New York.

3. Anna Selma Vinje Morpurgo, also known as Annselm Vinje-Morpurgo,

the plaintiff in this action was a member of the instructional staff at Queensborough Community College, a constituent college of the City University of New York, commencing upon information and belief in the spring semester of 1970.

4. She was notified that she would not be reappointed for the academic year 1972-73 on or about April 13, 1972. At this time the plaintiff was covered by a collective bargaining agreement between the then bargaining agent for the plaintiff's position, the United Federation of College Teachers (hereinafter UFCT) and the Board of Higher Education. (A copy of this agreement is annexed as Exhibit 1.) The UFCT was a predecessor union of the PSC, and its agreement contained a grievance procedure.

5. The UFCT filed a grievance of behalf of the plaintiff. The grievance was processed through all steps of the grievance procedure, which process was continued by the PSC upon the latter's creation on April 14, 1972, upon the merger of the UFCT with a second union representing different titles at City University called the Legislative Conference.

6. The union represented the plaintiff at an impartial arbitration proceeding before Arbitrator Milton Rubin on or about June 11, 1973 through the auspices of the American Arbitration Association. An award by Arbitrator Rubin was issued, dated August 27, 1973, in which the arbitrator denied the plaintiff's grievance. (A copy is attached as Exhibit 2.)

7. It is true that the union processed at arbitration only those claims with respect to procedural violations of the UFCT contract and did not pursue that portion of her grievance dealing with alleged discrimination. The failure to proceed on this ground, however, was based upon the union's recog-

dition of limitations imposed then and even today upon our contract and our inability to prove that any discrimination might have been perpetrated against her. The basic thrust of the limitation imposed derive from what is referred to as the Max-Kahn Memoranda (a copy of which is attached as Exhibit 3) which clearly makes confidential the deliberations of those academic committees passing upon the appointments, reappointments, promotion and granting of tenure.

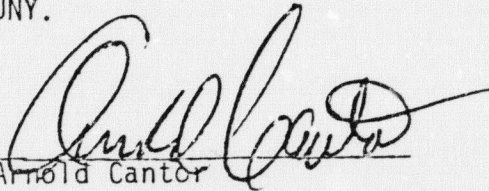
Because of this problem, the PSC has even challenged unsuccessfully in the courts this concept of confidentiality. (A copy of the New York Court of Appeals decision regarding this question is attached as Exhibit 4.)

8. The plaintiff was told that she could better process her discrimination allegations through the appropriate state and federal machinery set up for that purpose since those institutions were not bound by the same limitations as the union.

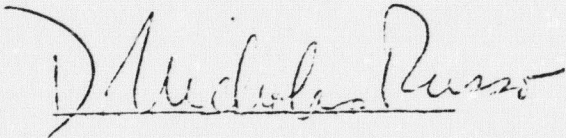
9. Evidently unhappy with her loss, the plaintiff filed an improper practice charge against the union at PERB, which she then agreed to withdraw after I had some discussion with her. (A copy of her agreement to withdraw the PERB charge is attached as Exhibit 5.)

10. The union has never thwarted the plaintiff's attempt to prove her allegations of discrimination against her at Queensborough Community College. It did make the judgment, however, that processing these allegations through the grievance-arbitration procedure would be fruitless because of the limitations placed upon the union described above. In fact, a reading of Exhibit 5 will indicate, the PSC was offering its cooperation in her efforts in the Equal Employment Opportunity Commission forum.

WHEREFORE, it is respectfully requested that this Court grant a motion for summary judgment against the plaintiff on the ground that there is no issue of material fact to be tried with respect to the defendant, Professional Staff Congress/CUNY.


Arnold Cantor

Sworn to before
me this 25th day
of June 1976



D. NICHOLAS RUSSO
Notary Public, State of New York
No. 31-8714540
Qualified in New York County
Commission Expires March 30, 1978

AGREEMENT BOARD OF HIGHER EDUCATION AND UNITED FEDERATION OF COLLEGE TEACHERS

PREAMBLE

AGREEMENT entered into this day of 1969 by and between the BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK (hereinafter referred to as the "Board"), and the UNITED FEDERATION OF COLLEGE TEACHERS, LOCAL 1460, AFL-CIO (hereinafter referred to as the "Union").

WITNESSETH:
WHEREAS, the Board has had a long-standing policy that there exists an academic community of interest and that such community of interest includes the Instructional Staff; and
WHEREAS, the Board has been recognized as a "Public Employer" consistent with the terms and provisions of the Public Employees' Fair Employment Act of the State of New York; and
WHEREAS, the Board elected to come under the rules of procedure and regulations of the New York State Public Employment Relations Board; and
WHEREAS, a secret ballot election was conducted by the New York State Public Employment Relations Board; and
WHEREAS, the members of the Instructional Staff in the unit hereinafter set forth freely selected the Union as their representative for the purposes of collective negotiations and the settlement of grievances; and
WHEREAS, the Board and the Union subscribe to the concepts of Academic Freedom as expressed by the AAUP as follows:

- The teacher is entitled to full freedom in research and in the publication of the results, subject to the adequate performance of his other academic duties; but research for pecuniary return should be based upon an understanding with the authority of the institution.
 - The teacher is entitled to freedom in the classroom in discussing his subject, but he should be careful not to introduce into his teaching controversial matter which has no relation to his subject.
 - The college or university teacher is a citizen, a member of a learned profession, and an officer of an educational institution. When he speaks or writes as a citizen, he should be free from institutional censorship or discipline, but his special position in the community imposes special obligations. As a man of learning and an educational officer, he should remember that the public may judge his profession and his institution by his utterances. Hence he should at all times be accurate, should exercise appropriate restraint, should show respect for the opinion of others, and should make every effort to indicate that he is not an institutional spokesman.
- NOW, THEREFORE, it is agreed as follows:

ARTICLE I BOARD - UNION RELATIONSHIPS

1.1 The Board and the Union agree to maintain the academic character of the University as an institution of higher education.
1.2 Nothing contained in this Agreement shall be construed to diminish the rights granted under the Bylaws of the Board to the entire and bodies within the internal structure of CUNY so long as such rights are not in conflict with this Agreement. If provisions of this Agreement require changes in the Bylaws of the Board, such changes will be effected.

1.3 If there is an inconsistency or conflict between the Bylaws of the Board and this Agreement, the provisions of this Agreement shall apply.
1.4 The Board will furnish the Union an advance copy of the agenda of each regular meeting of the Board, as well as copies of the minutes of such meetings.

1.5 The Union may request to be heard by the Board at a regularly scheduled meeting, in order to speak to any item on the Board agenda, provided that such request is made known to the Board Chairman at least three (3) days prior to the meeting.

ARTICLE II RECOGNITION

2.1 The Board recognizes the Union as the exclusive collective negotiation representative of a unit which comprises:

- | | |
|--------------------|---------------------|
| Lecturer | Excluded: |
| Teaching Assistant | All other employees |

2.2 It is understood that nothing contained in this Article shall be construed to prevent the Board or any Board official from meeting with any individual or organization to hear views on any matters, except that as to matters so presented which are proper subjects of collective negotiations, any changes or modifications shall be made only through negotiation and agreement with the Union.

ARTICLE III UNIT STABILITY

3.1 The classification of Lecturers as part of the present collective negotiation unit will remain for the duration of this Agreement.

3.2 Any group of Lecturers now in this unit whose group classification is changed during the life of this Agreement will remain in this unit for the duration of this Agreement.

ARTICLE IV CHECK-OFF

4.1 The Board agrees to the principle of the check-off of Union dues for all members of this unit in amounts to be determined by the Union and in accordance with forms and procedures as approved by the Comptroller's Office of the City of New York.

ARTICLE V CONSULTATION

5.1 The Chancellor or his designee shall meet with representatives of the Union twice each semester for the purpose of discussing legitimate and proper subjects of collective negotiations that may arise during the life of this Agreement and to discuss those matters necessary to the implementation of this Agreement which are University-wide in nature. Other matters may be placed on the agenda and considered at the discretion of the Chancellor.

5.2 A written agenda shall be submitted by the Union no less than five (5) days before the scheduled date of the meeting.

5.3 The President or Provost or his designee shall meet with representatives of the Union twice each semester for the purpose of discussing legitimate and proper subjects of collective negotiations that may arise during the life of this Agreement and to discuss those matters necessary to the implementation of this Agreement which are local in nature. Other matters may be placed on the agenda and considered at the discretion of the President.

5.4 A written agenda shall be submitted by the Union no less than five (5) days before the scheduled date of the meeting.

5.5 Nothing contained herein shall prevent the Union from consulting with the Chancellor and the College Presidents or Provosts, or designees at times other than those set forth above, if matters within the area of collective negotiations arise of an urgent or emergency nature.

ARTICLE VI GRIEVANCE PROCEDURE AND ARBITRATION

6.1 INTENT
The Board and the Union agree that they will use their best efforts to encourage the informal and prompt settlement of complaints and grievances which may arise between the Union, the employees and the Board. The orderly processes hereinafter set forth will be the sole method used for the resolution of all complaints and grievances.

6.2 DEFINITIONS
A complaint is an informal claim by an employee in the bargaining unit, or by the Union of improper, unfair, arbitrary or discriminatory treatment. A complaint may, but need not, constitute a grievance. Complaints shall be processed through the informal grievance procedure as herein set forth.

A grievance is an allegation by an employee or the Union that there has been:

- a breach, misinterpretation or improper application of the terms of this Agreement; or
- an arbitrary or discriminatory application of, or a failure to act pursuant to, the Bylaws and written policies of the Board related to the terms and conditions of employment.

ARTICLE VII COMPLAINTS

Any employee in the bargaining unit may present and discuss his complaint either with or without a representative of the Union. Similarly, a representative of the Union may present and discuss a complaint with or without an employee or group of employees with the head of the Department involved and shall be entitled to a settlement, withdrawal or disposition of a complaint at this informal stage shall not constitute binding precedent in the settlement of similar complaints or grievances.

ARTICLE VIII FORMAL PROCEDURE FOR HANDLING GRIEVANCES

Grievances may be filed by an employee in the bargaining unit on his behalf, or by the Union on its behalf, or on behalf of any employee or group of employees in the bargaining unit. Grievances involving employees in more than one College of the University may be filed by the Union initially at Step 2 of the grievance procedure.

A grievance must be filed by an employee or the Union within a reasonable time from the date it was found to exist. Any grievance not processed in accordance with the time limits specified herein shall be deemed waived by the grievant.

Step 1. A grievance must be stated in writing setting forth the basis therefor, and the remedy requested. All grievances shall be filed with the President of the College affected or his designee. The President or his designee shall within seven (7) calendar days of receipt of the grievance meet with the grievant and a representative of the Union for the purpose of discussing the grievance. The President or his designee shall within seven (7) calendar days after the grievance meeting his decision with reasons in writing to the grievant and the Union.

Step 2. If the grievance has not been settled Step 1, then within seven (7) calendar days, the grievant or the Union shall submit the grievance to the President of the College or his designee, or the expiration of the time limits for making such decision, the grievant or the Union shall submit the grievance in writing to the Chancellor or his designee, together with a copy of the decision of the President of the College affected, or his designee. The Chancellor or his designee shall within seven (7) calendar days of the receipt of the grievance meet with the grievant and a representative of the Union for the purpose of discussing the grievance. The Chancellor or his designee shall within seven (7) calendar days after the grievance meeting issue his decision with reasons in writing to the grievant and the Union.

Notes: Grievances relating to appointment or reappointment which are concerned with matters of academic judgment may not be processed by the Union beyond Step 2 of the grievance procedure. Grievances within the scope of these areas in which there is an allegation of arbitrary or discriminatory use of procedure may be processed by the Union through Step 3 of the grievance procedure. In such case the power of the arbitrator shall be limited to remedying the matter for compliance with established procedures. It shall be the arbitrator's first responsibility to rule as to whether or not the grievance relates to procedure rather than academic judgment. In no event, however, shall the arbitrator substitute his judgment for the academic judgment. In the event that the grievant finally prevails, he shall be made whole.

6.5 Step 3. Arbitration. If the grievance has not been settled at Step 2, then within seven (7) calendar days after the receipt of the written decision of the Chancellor or his designee, the grievant or the Union may request arbitration by giving notice to that effect, by registered mail, directed to the Chancellor or his designee and to the Arbitration Panel. The Arbitration Panel shall be jointly chosen by the Board and the Union, and shall consist of three (3) members who are familiar with the customs, practices, nature and spirit of the academic community. Each member is to serve in turn as sole arbitrator for a given case. Where a member of the Panel is unable to serve for any reason, the next member in sequence shall then serve. The arbitration procedure shall be in accordance with the rules of the American Arbitration Association. In no event shall the arbitrator have authority to add to, subtract from, modify or amend the provisions of this Agreement or the Bylaws of the Board. A final decision or award of the arbitrator shall be made within thirty (30) calendar days after the closing of the hearing. Such decision or award shall be binding upon the Union, the Board, and the employees affected thereby. The cost of arbitration shall be borne equally by the parties. Expenses for witnesses, however, shall be borne by the party who calls them.

ARTICLE VII NONDISCRIMINATION

7.1 Neither the Board nor the Union will interfere with, restrain or coerce the employees covered by this Agreement because of membership in or non-membership in, or lawful activity on behalf of the Union. The Board will not discriminate in respect to hire, tenure of employment or any terms or conditions of employment of any employee covered by this Agreement because of sex, race, age, national origin, religion, political belief or membership in, or lawful activity on behalf of the Union, nor will it discourage or attempt to discourage membership in the Union.

7.2 The Union agrees that it will admit to membership and represent equally all employees in the bargaining unit.

ARTICLE VIII INFORMATION AND DATA

8.1 The Board shall make available to the Union upon its reasonable request and within a reasonable time thereafter such statistics and financial information related to the collective negotiation unit and in possession of the Board as are necessary for negotiation and implementation of a collective negotiation agreement. It is understood that this shall not be construed to require the Board to compile information and statistics in the form requested nor already compiled in that form unless mutually agreeable.

ARTICLE IX RELEASED TIME

9.1 The Board shall grant released time at each college to the Union Chapter Chairman or his designee for the implementation of this contract and the handling of grievances, to the extent of the weekly contact hours of one course, not to exceed three contact hours. Such released time may not be used to solicit union membership.

9.2 The designee must be made known to the University at the beginning of the semester preceding the semester for which released time is requested. In order to be eligible for released time, the individual must be an employee within this unit and may be released from scheduled time worked in the title of Lecturer only.

9.3 In order to be eligible for released time, the individual must carry a minimal schedule of five contact hours from which he may be released from one course.

ARTICLE X USE OF COLLEGE FACILITIES

10.1 Upon request to the President or his designee, the college chapter of the Union shall be permitted to meet at the college if appropriate facilities are available. All requests must be in writing, wherever possible, three (3) days prior to the requested meeting.

10.2 The Union shall be permitted to use college mailroom facilities for the distribution of Union communications.

10.3 At each college campus, the President or his designee shall assign a bulletin board for the exclusive use of the Union for the purposes of posting Union notices. It is agreed that the number of Union bulletin boards at each college campus shall not exceed four. However, the Union shall be entitled to post notices on existing college bulletin boards customarily used for general notices to faculty, such as in the Faculty Lounge and in the Faculty Dining Room.

ARTICLE XI LEAVE OF ABSENCE FOR UNION OFFICERS

11.1 Members of the Instructional Staff who are or shall become during the life of this Agreement University-wide elected or appointed officers of the Union, shall upon proper application be granted a special leave of absence without pay, for not less than one semester for the purpose of performing legitimate duties for the Union. Those who are granted leaves of absence without pay shall receive credit toward annual salary increments on the schedules appropriate to their rank. The Board

agrees to recommend to the appropriate retirement program that such time be granted service credit for retirement purposes and that the employees receiving such leave of absence be permitted to pay regular monthly contributions based upon their earnable salaries as members of the teaching staff for the period of such leave.

11.2 No more than three University-wide officers shall be simultaneously on leave of absence under this provision with no more than one person from any given college.

11.3 If in the event any of the University-wide officers shall not be eligible under leave regulations, the Board shall guarantee reemployment for one year upon termination of the leave of absence provided that the employee granted such leave of absence has been employed for a minimum of two years prior to taking the leave of absence. Such time shall not be counted in computing eligible time and service of a Lecturer for the award of certificate of continuous appointment by the Board.

ARTICLE XIII WORKLOAD

12.1 Employees on the teaching staff of the City University of New York shall not be required to teach an excessive number of contact hours, assume an excessive student load, or be assigned an unreasonable schedule, it being recognized by the parties that the teaching staff has the obligation among others to be available to students, to assume normal committee assignments, and to engage in community service.

ARTICLE XIII CLASSIFICATION OF TITLES

13.1 The title "Lecturer (full-time)" shall be a tenure-bearing certificate of continuous employment title used for full-time members of the faculty who are hired to teach and perform related faculty functions but do not have a research commitment. Lecturers, who in the past have taught a full-time program based on their departmental standards, shall be included in this title regardless of the prior or current method of payment of compensation. A certificate of continuous employment shall be granted in accordance with provisions of Article XXV. Persons appointed to this rank shall be entitled to all faculty retirement and other fringe benefits and shall be scheduled in accordance with provisions of Article XII.

13.2 The title of Lecturer (part-time) shall be used only for people who are working towards a doctorate on a full-time basis and are to be employed as part-time teaching or research personnel. Such a teaching commitment shall not exceed seven contact hours a semester; a research commitment shall not exceed fifteen hours a week. Appointment to this title shall be limited to three years. Individuals who were employed in this category prior to the signing of this Agreement shall begin their three-year period from the effective date of this Agreement.

13.3 The regular full-time academic title shall be used for those members of the full-time Instructional Staff of a college within the City University who assume teaching or related assignments in a University session

which are in addition to normal full-time assignments. The extent of such additional assignments shall be limited by the multiple position regulations of the Board.

13.4 The title of Adjunct Lecturer, Adjunct Assistant Professor, Adjunct Associate Professor or Adjunct Professor shall be used for people who are not full-time members of the City University of New York faculty and who teach part-time or who have other part-time assignments in the University. The assignment of title shall depend on meeting the relevant academic qualifications as stipulated in the Bylaws of the Board.

13.5 The title Lecturer may not be used for non-instructional functions.

ARTICLE XIV SERVICE CREDIT TOWARD

SABBATICAL LEAVE ELIGIBILITY

14.1 The Board will grant service credit toward eligibility for sabbatical leave for all members of this unit on the following basis:

- A Lecturer (full-time) shall be eligible for sabbatical leave.
- Each year of service as a Lecturer (full-time) shall be credited as one year of the six-year eligibility requirement.
- Service as a Lecturer (part-time) shall be credited on the basis of one-half year of service eligibility for each full year of employment.

ARTICLE XV ANNUAL LEAVE

15.1 Lecturers (full-time) who have taught for a full year (September - June) and who have been paid against an annual salary budget line shall be entitled to the same vacation allowance as other members of the faculty.

15.2 Effective July 1, 1971, Lecturers (full-time) who have taught for a full year (September - June) shall be entitled to the same vacation allowance as other members of the faculty whether paid against an annual salary budget line or any other tax levy line.

15.3 Effective July 1, 1971, Lecturers (part-time) who have taught for a full year (September - June) shall be entitled to the same vacation allowance as other members of the faculty.

15.4 Lecturers (part-time) whose titles shall be changed to Adjunct Lecturer, Adjunct Assistant Professor, Adjunct Associate Professor and Adjunct Professor shall not be entitled to vacation pay.

ARTICLE XVI NOTICE OF APPOINTMENT AND REAPPOINTMENT

16.1 The decision of the Board to reappoint or not to reappoint persons in the titles Lecturer (full-time) and Lecturer (part-time) shall be communicated in writing to the person affected not later than April first preceding the expiration of the first full year of service, and not later than December first of each succeeding year.

16.2 The decision of the Board to reappoint with tenure (certificate of continuous employment) or not to reappoint persons in the title Lecturer (full-time) for the sixth full year shall be communicated in writing to the person affected not later than December first preceding the expiration of the fifth full year of service.

16.3 Where an appointee begins his service prior to September first, the tenure (certificate of continuous employment) period shall not begin until the succeeding September first, and when an appointment is made during the month of September, the appointment shall date as of September first for the purpose of tenure.

16.4 Employees in adjunct titles shall be notified of non-reappointment or rescission of previously granted appointment in accordance with the following table:

- Those employees who are not to be reappointed because of poor evaluation shall be notified in the Fall semester not later than December 15 and in the Spring semester not later than May 15.
- Those employees who are not to be reappointed because of insufficient registration, financial inability or changes in curriculum shall be notified as soon as the college administration is aware of the situation.

ARTICLE XVII PROFESSIONAL EVALUATIONS

17.1 All evaluations of the professional activities of the employee shall be in writing.

17.2 At least once each semester each employee shall be evaluated on the basis of at least a one hour observation of the work of the employee. The employee shall be given 24 hours of prior notice of observation.

17.3 The department chairman within a period of three weeks from the date of the observation shall discuss the evaluation with the employee who shall have the right to present any material he feels is pertinent to the proper consideration of the nature and scope of the evaluation. Immediately following the discussion of the evaluation with the employee, the chairman shall prepare a record of the discussion in memorandum form.

17.4 Such memorandum shall become a part of the employee's personnel file in accordance with the conditions for making it a part of such file as set forth under provisions made for Personnel Files (Article XVIII).

17.5 At least once each year, each employee shall have an evaluation conference with his department chairman. At such conference the employee's total academic and professional progress for that year and cumulatively to date shall be reviewed. A review of the second observation may be part of such conference. Immediately following this discussion, the chairman shall prepare a record of the discussion in memorandum form.

17.6 Such memorandum shall become a part of the member's personnel file in accordance with the conditions for making it a part of such file as set forth under provisions made for Personnel Files (Article XVIII).

17.7 If a grievance involving a personnel decision based on a written evaluation reaches the level of the Chancellor's Office, the grievant and his representative shall be given the right to read, but not to retain, a true copy of the original written evaluation and of evaluations.

ARTICLE XXI FACILITIES FOR FACULTY

21.1 The Board recognizes the problem of providing adequate space and facilities for faculty and will request the President to establish a committee on each campus to analyze the space and facilities problem, and to chart specific progress towards those ends listed below. Such committee shall have Union representation.

- A minimum of 120 square feet of private, enclosed office space shall be provided for each full-time member of this unit. No more than two full-time persons shall be assigned to each office.
- Each office for full-time members of this unit shall be equipped, furnished and lockable. Such equipment shall include, but not be limited to: desks, chairs, file cabinet, telephone, supplies, bookshelves, etc. Wherever possible, access to a typewriter shall be provided.
- A minimum of one telephone line with individual extensions shall be provided for each two full-time members of this unit for both intra-college and outside calls.

- A minimum of one secretary shall be provided for each five full-time members of this unit. Proportionate secretarial services shall be provided for part-time members of this unit.
- Each building shall provide suitably equipped faculty lounges and rest rooms which shall be available to the entire instructional staff. These facilities shall be cleanly and properly maintained. They shall also be lockable and a key made available to every member of the Instructional Staff assigned to the building. Suitable dining facilities shall be available at each campus providing wholesome food at reasonable prices.

- Each member of the unit employed on a part-time basis shall have office facilities including a desk made available to him at the time he is on campus. Part-time members shall also be provided with a locker or lockable space for the storage of personal belongings and professional materials. Such space shall also include at least one drawer of a filing cabinet.

ARTICLE XXII STAFF HOUSING AND PARKING

22.1 The Board recognizes the housing problem on each campus for faculty, staff and students and will request the President to establish a committee on each campus to analyze the housing problem and to chart specific progress toward the solution of this problem. Such committee shall have Union representation.

22.2 The Board recognizes the parking problem on each campus for faculty, staff and students and will request the President to establish a committee on each campus to analyze the parking problem and to chart specific progress toward the solution of this problem.

ARTICLE XXIII SALARY SCHEDULES

Senior and Community Colleges LECTURER (FULL-TIME)

23.1	10/1/69	10/1/70	10/1/71
	\$11,000	\$11,950	\$12,900
	11,850	12,800	13,750
	12,450	13,400	14,150
	13,000	14,000	14,750
	13,650	14,600	15,350
	14,250	15,200	15,950
	14,850	15,800	16,550
		16,400	17,150

Incumbents, on October 1, 1969, shall be placed on the next higher step of this schedule and receive one additional increment. Incrementation after salary slotting shall be as of January 1 of each year except that there shall be no increment on January 1, 1970.

LECTURER (PART-TIME)

23.2	10/1/69	10/1/70	10/1/71
	\$5,500	\$5,925	\$6,350
	5,925	6,400	6,775
	6,225	6,700	7,075
	6,500	7,000	7,375
	6,825	7,300	7,675

Incumbents in the title of Teaching Assistant, on October 1, 1969, shall be slotted as follows:

- new appointees at \$5,500
- one or more years of prior service at \$5,925

As of July 1, 1970 all new appointments shall be made to the new title and in accordance with the then existing salary schedule.

ADJUNCT AND PROFESSIONAL TITLES

23.3	10/1/69	9/1/70	9/1/71
Instructor, Lecturer,	\$14 (\$210)	\$16 (\$240)	\$18 (\$285)
Adjunct Lecturer	15 (\$225)	17 (\$255)	20 (\$300)
	16 (\$240)	18 (\$270)	21 (\$315)
Assistant Professor,	17 (\$255)	19 (\$285)	22 (\$330)
Adjunct Assistant Professor	18 (\$270)	20 (\$300)	23 (\$345)
Associate Professor,	19 (\$285)	21 (\$315)	24 (\$360)
Adjunct Associate Professor	20 (\$300)	22 (\$330)	25 (\$375)
	21 (\$315)	23 (\$345)	26 (\$370)
Professor, Adjunct Professor	22 (\$330)	24 (\$360)	27 (\$405)
	23 (\$345)	25 (\$375)	28 (\$420)
	24 (\$360)	26 (\$390)	29 (\$435)

() = semester hour rate

23.4 The following provisions shall apply for all hourly-paid members of this unit:

- All classroom teachers below new minimum move to the new minimum for their respective currently slotted rank.
- People off step move to the next higher dollar rate step.
- If the resultant rate increase is less than \$3.00 per hour, the rate shall be adjusted to move to the next higher step which provides a \$3.00 increase.
- However, the new rate may not exceed the scheduled maximum for the rank.
- Increments within rank shall be automatic at the next September first following a full year of employment.
- Changes in titles shall be made effective in the next fiscal year beginning July 1, 1970.

23.5 Special Groups

- Lecturer - fractional schedules**
Since it is the intent of the parties to agree to the discontinuance of the fractional use of lines, e.g., 3/5's, 2/3's, etc. of a full-time schedule, effective with the beginning of the Fall 1970 semester, it is agreed that Lecturers teaching such fractional schedules in the academic year 1969-1970 shall be given preference in consideration for such Lecturer (full-time) openings which are available in their respective departments for the academic year 1969-1970. Lecturers teaching fractional schedules shall receive an October 1, 1969 increase as a proportion of that salary step which would have been applicable had they been employed full-time.

- Psychological Counseling** - shall be remunerated in accordance with the newly established schedule and in accordance with the stated guidelines.

- Curriculum and Student Activity Counseling** - shall be remunerated in accordance with the newly established schedule and in accordance with the stated guidelines at the rate of 60% of that newly established schedule.

- Professional Library Staff**
Associate Professors, Assistant Professors and Instructors shall be remunerated in accordance with the newly established schedule and in accordance with the stated guidelines at the rate of 60% of that newly established schedule.

- Professional Registrar's Staff**
Associate Registrars and Assistant Registrars shall be remunerated in accordance with the newly established schedule and in accordance with the stated guidelines at the rate of 60% of that newly established schedule.

Both parties agree that the work required from these staffs during the registration period is an integral part of the total job. Thus, every effort shall be made to minimize compensable time for this group during registration periods. Necessary coverage is to be achieved through work schedule changes.

- Professional Business Management Staffs**
Assistant Business Managers and Assistant to Business Managers shall be remunerated in accordance with the newly established schedule and in accordance with the stated guidelines at the rate of 60% of that newly established schedule.

Both parties agree that the work required from these staffs during peak periods, such as registration, budget preparation, etc., is an integral part of the total job. Thus, every effort shall be made to minimize compensable time for this group during these peak periods. Necessary coverage is to be achieved through work schedule changes.

- College Laboratory Technicians** - shall be remunerated for work performed in special sessions (evening, summer) beyond their normal assignments at a semester hour rate. Such semester hour rate is to be computed from the annual salary base of each individual by first determining the hourly rate and then converting the hourly rate to a semester hour rate. The hourly rate is to be 1/1500 of the annual salary base rounded to the next highest half dollar.

- This generic title, pending Board Bylaw change, includes the following current titles: College Engineering Technician, College Science Technician and College Science Assistant.

ARTICLE XXIV WELFARE BENEFITS

- Lecturers (full-time) shall be eligible for welfare benefits as provided through the CUNY Faculty Welfare Trusts beginning with their second full year of employment.

- The Board will provide moneys on a per capita basis.

- The Board shall contribute \$225 per capita to the City University Faculty Welfare Trusts in the first contract year for eligible employees. This shall be increased by \$20 the second year for a total contribution of \$245 per capita; and in the third year the Board shall increase its contribution by \$55 for a total contribution of \$300 per capita.

- The Board will make every effort to secure full coverage of the health and hospitalization plans of the City of New York for all members of this unit who teach at least six hours and are not covered by a wholly paid employer plan.

ARTICLE XXV JOB SECURITY

- All members of this unit who prior to September 1, 1969 have served as teacher or counsellor in the title of Lecturer, paid from tax levy funds, for five or more years, or ten or more semesters, of continuous full-time appointments and who have been reappointed as of September 1, 1969 for an additional full-time service shall be granted an administrative certificate of continuous employment by the Board effective September 1, 1969.

Thereafter, eligibility for such a certificate of continuous employment shall be based on a sixth full-time appointment in the title of Lecturer preceded by five years of continuous appointments. In computing eligible time in service, such time shall commence with the first September of appointment.

- Where a person has taught on a full-time basis five or more years cumulatively since 1961 and is currently teaching full-time, such person may be granted a certificate of continuous employment beginning with the next full-time appointment. This provision shall be deemed to be inoperative after September 1, 1971.

- Where service has been continuous and a break in full-time service has occurred by virtue of a reduced schedule, such less than full-time service shall be prorated toward its equivalency in full-time service.

- The certificate of continuous employment shall be valid only in that college which makes the certification or sixth appointment and shall carry with it the guarantee of full-time reappointment subject to continued satisfactory performance, stability in academic program, sufficiency of registration and financial ability.

- The terms of this article do not apply to service in any other title than Lecturer.

- Effective one year after initial appointment, no member of this unit, full-time or part-time, shall be denied reappointment on the basis of professional incompetence unless he has been evaluated during at least three semesters (including the first year of appointment) according to provisions contained in this Agreement, Article XVII, and unless two of the last three evaluations indicate unsatisfactory professional performance.

- For the purposes of this provision (25.6), September 1969 shall constitute the initial appointment year, except that those part-time Lecturers who have served for the past five consecutive years or ten consecutive semesters and who have been reappointed as of September 1969, shall be deemed to have demonstrated satisfactory performance for the purposes of this provision.

ARTICLE XXVI PREFERENTIAL REHIRING

- The following departmental preferential rehiring policy shall govern part-time members of this unit:
 - In the event of the cancellation of a class because of financial inability, insufficient enrollment or changes in curriculum, departmental preferential rehiring will be established for identical or remedial courses which the individual staff member has taught.

- All individuals affected by such a reduction in force shall be placed on a departmental preferential rehiring list established by date of initial employment.

- A list of vacancies within a department shall be posted on the departmental office bulletin board and be subject to periodic updating.

- The individual is to be responsible for securing information as to his position on a departmental preferential rehiring list and must apply for any available position through the department chairman.

- The individual's name on a departmental preferential rehiring list shall be deleted after three years.

ARTICLE XXVII LECTURERS EMPLOYED IN THE LIBRARIES

- In the Schools of General Studies, Lecturers who are employed primarily to perform professional library functions shall not be required to perform guard duty or maintenance duties.

ARTICLE XXVIII WAIVER OF TUITION FEES

- All members of this unit who teach six or more hours per week shall be granted a waiver of tuition fees for undergraduate credit-bearing courses offered by the University in accordance with the procedures for the waiver of undergraduate tuition fees for other groups of employees.

ARTICLE XXIX NO STRIKE PLEDGE

- The Board and the Union agree that disputes which may arise between them shall be settled without resort to strike or lockout and that the requirements of the law in this regard will not be violated. The Board agrees it will not lock out any or all of its employees during the term of this Agreement and the Union agrees on behalf of itself and its membership that there shall be no strikes, slow-downs or interference with the normal operation of the City University during the term of this Agreement.

ARTICLE XXX LEGISLATIVE ACTION

- IT IS AGREED BY AND BETWEEN THE PARTIES THAT ANY PROVISION OF THIS AGREEMENT REQUIRING LEGISLATION BY AMENDMENT OF LAW OR BY PROVIDING THE ADDITIONAL FUNDS THEREFOR, SHALL NOT BECOME EFFECTIVE UNTIL THE APPROPRIATE LEGISLATIVE BODY HAS GIVEN APPROVAL.

ARTICLE XXXI DURATION

- This Agreement shall be effective for the period from September 1, 1969 to August 31, 1972.
- The parties agree to commence negotiations for a renewal Agreement no later than six (6) months prior to August 31, 1972.

Dated, New York, BOARD OF HIGHER EDUCATION
September 1, 1969

By
UNITED FEDERATION OF
COLLEGE TEACHERS, LOCAL 1400

EXHIBIT 2 TO CANTOR AFFIDAVIT - ARBITRATION
AWARD

American Arbitration Association

VOLUNTARY LABOR ARBITRATION TRIBUNAL

In the Matter of the Arbitration between

BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK

and

UNITED FEDERATION OF COLLEGE TEACHERS,
LOCAL 1460, AFL-CIO

CASE NUMBER: 1339 0155 73

AWARD OF ARBITRATOR

THE UNDERSIGNED ARBITRATOR *(initials)*, having been designated in accordance with the arbitration agreement entered into by the above-named Parties, and dated and having been duly sworn and having duly heard the proofs and allegations of the Parties, AWARDS as follows:

The Union's grievance, claiming that the nonreappointment of Adjunct Lecturer Annselm Vinje-Mopurgo violated Article XVII, Section 17.3, and Article XXV, Section 25.6 of the Agreement, is denied.

(Signature of Milton Rubin)

Arbitrator's signature (dated)

MILTON RUBIN

STATE OF New York } ss.:
COUNTY OF Westchester }

On this 27 day of August, 1973, before me personally came and appeared MILTON RUBIN to me known and known to me to be the individual *(initials)* described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

FREDA RUBIN
Notary Public, State of New York
Qualifying in Westchester County
No. 60-7337315
Term Expires March 30, 1975

In the Matter of the Arbitration between *
 BOARD OF HIGHER EDUCATION OF THE CITY OF *
 NEW YORK *
 and *
 UNITED FEDERATION OF COLLEGE TEACHERS, *
 LOCAL 1460, AFL-CIO *
 * * * * *

O P I N I O N

and

A W A R D

Miss Anselm Vinje-Mopurgo taught as an Adjunct Lecturer in Philosophy in the Social Science Department of Queensborough Community College since the Spring semester of 1970. She was informed on April 13, 1972 that the Personnel and Budget Committee of the Department had voted that day not to recommend that she be reappointed to teach in the following Fall/1972 semester.

The Union grieved for Miss Vinje-Mopurgo that the failure to reappoint her had violated Articles XVII, Section 17.3 and XXV, Section 25.6 of the Agreement, and later added the charge of violation of Article VII. A Step I grievance meeting was held on May 9, 1972, with President Schmeller of the College finding that neither Article XVII nor Article XXV were violated. However, he referred the question to the P & B Committee to reconsider its action in light of the material Vinje-Mopurgo had submitted at the meeting, namely transcripts of tapes taken of her lectures, examination results and student evaluations on forms which she had developed and given to her students. The notification of the Committee's action and President Schmeller's letter of May 12, 1972 announcing his finding did not expressly report the reason for the failure to recommend reappointment.

On May 22, 1972, the Committee voted unanimously with the vote of five participating members (the former vote was unanimous with four participating members) not to change its former decision not to recommend reappointment. Vinje-Mopurgo was finally given official notification of this second decision on July 11.

The Union's Step II Grievance, with the added claim of violation of Article VII, was denied, and the Union requested arbitration. At the arbitration hearing held on June 11, 1973, the Union dropped its claim regarding Article VII. The parties were duly represented at the hearing, and post-hearing briefs were filed.

The question arose at the outset of the hearing concerning the reason why the appointment was not renewed. The Union requested a statement of the Board, with stress laid on the absence of any reason for the nonreappointment given to Vinje-Mopurgo. Since she understood, however, that the reason was professional incompetence, the Union claims that the evaluations were not based upon proper implementation of Section 17.3 which provides for a timely recorded conference after each observation, and that there were not the required two unsatisfactory evaluations of the last three required by Section 25.6.

The Board took the initial position that the P & B Committee's action was an expression of academic judgment it need not defend under the Note Bene in Article VI. Consequently, it need not give the nature of the judgment which can be academic though not concerned with teaching and classroom competence.

The Board questions the appropriateness of the Union's

claim of violation of the two articles in view of its charge that it had never been told and still does not know why Vinje-Mopurgo was not reappointed. However, in response to the grievance, the Board holds that two of the last three semester evaluations were unsatisfactory, in effect, and that the evaluations for the three semesters were based on contractually proper observations and evaluations.

The evidence submitted in the hearing, and the exhaustive reviews and arguments made in the briefs, were carefully studied. The culminating determination is that the grievance should be denied on the following considerations which should answer the basic claims made by the parties.

Academic judgments relating to reappointment are not subject to arbitral review. Only their prerequisite procedure may be tested. Though the well-known Nota Bene does not state which procedure may be viewed, logically it is the process by which the judgment was made on whether to reappoint. Procedure noted by the Agreement is the process of observation on which evaluation is made each semester. Judgments not to reappoint Lecturers with more than one year's teaching for reason of incompetence must be justified by these evaluations. The one form of academic judgment contractually attached to this procedure is a finding on competence with the concomitant decision on appointment.

With this situation, I should think that it is incumbent upon the Board to identify the nature of the academic judgment or

defend the steps which culminated in the competence decision. The Board in other matters before me has explained its academic judgments of factors other than classroom competence which affected the continued employment of teachers. Since the Board has taken the posture of not stating expressly why Vinje-Mopurgo was not reappointed, I, as Arbitrator in this Agreement, cannot compel the Board to do so, but must treat this matter as a failure to reappoint because of unsatisfactory professional performance. Were there another reason for the Committee's action, its expression in the hearing would have avoided the review of procedure.

The grievance experience indicates that competence must have been the concern of the P & B Committee. Vinje-Mopurgo's defense of her classroom performance in the Step I grievance meeting was not rejected as irrelevant, but given to the Committee for its reconsideration. Presumably, the Committee's decision to retain its initial judgment was taken upon study of Vinje-Mopurgo's material on her classroom work.

Viewing the academic judgment related to the nonreappointment, its derivation stands up basically as not arbitrarily nor discriminatorily based, and contractually proper. Evaluations of Vinje-Mopurgo preceded by the required observations and conferences were made for the last three semesters of Spring/71, Fall/71 and Spring/72.

Vinje-Mopurgo was observed by Professor Stabile on March 22, 1971, followed by an evaluation conference held with Professor White on March 23 with the memorandum dated on the same day. Vinje-Mopurgo signed that she had read the memorandum which included comments

for changes in the content and organization of her lectures. Vinje-Mopurgo did not attach comments, though the memorandum records her defense, or explanation, of her classroom work.

Another observation was made on November 1, 1971, by Professor Selzer, with an evaluation conference and memorandum on November 15. Vinje-Mopurgo signed the memorandum on November 22 without affixing comment. As was the case with the previous memorandum, this one, though not clearly labeled as satisfactory or unsatisfactory, criticized content and presentation and recorded Vinje-Mopurgo's defense.

Vinje-Mopurgo was observed in the next semester on March 23, 1972, by Professor Hong. In the evaluation conference on April 6 with Professor Selzer, with the memorandum of the same date, Vinje-Mopurgo was told that her observed lesson was deemed to be unsatisfactory. The memorandum reported the nature of the observer's criticism. Vinje-Mopurgo rejected the criticism and requested another observation; she refused to sign the memorandum. The "observation was deemed unsatisfactory."

Another observation was made on April 11 by Professor Evelyn Peterson who considered the session to be unsatisfactory. The evaluation conference on April 18, 1972, with the memorandum of the same date, discussed the conference with notation made of Vinje-Mopurgo's comments. She refused to sign the memorandum and did not file any comments. This memorandum also contained the express comment that "This observation was deemed unsatisfactory."

There is no question that Vinje-Mopurgo was duly observed and evaluated for the three semesters as provided by Section 17.3. Were the evaluations made as required by Section 25.6, if it be considered that nonreappointment was based on professional incompetence? The last Spring/72 evaluation was clearly critical in its judgment of the observed class in addition to having the unsatisfactory check contested by Vinje-Mopurgo.

The two previous evaluation memoranda do not expressly state whether the evaluations were satisfactory or unsatisfactory. They criticize Vinje-Mopurgo's teaching and, at the same time, take the occasion to find points to praise. In fact, these memoranda are so drafted as to be sources for either conclusion. However, on careful and repeated reading I have finally concluded that they have not indicated satisfactory performance; neither contained comment with which Vinje-Mopurgo did not have to take issue. Arbitrator Christensen's comments in his Opinion on an arbitration between the same parties (Geissler) aptly expresses my position. Though the Agreement is expiring and awaiting replacement by another, this comment should be cited here to stress the imperative need for clear and unmistakable administration to avoid the development of ambiguous situations which cannot be confidently determined even by Arbitrators:

With some misgivings, I have concluded that I must rule in favor of the Board. In a matter as important as a document which can be used to terminate employment, I find it difficult to understand why the responsible authority is unable to refer directly to the benchmark which the document is supposed to record, i.e., the satisfactory or unsatisfactory quality of the individual's professional performance. None of

the three evaluation summaries specifically posits either of those conclusions. On balance, however, I consider their critical comments to constitute an unfavorable judgment...In the context of the language of the evaluation summaries themselves, however, they tip the balance to a finding that the contingency mandated by paragraph 25.6 was met, if only barely.

I cannot conclude without adding the observation that while the newness of the parties' contractual relationship and the procedures contained therein might excuse some looseness in the actual conduct of those procedures, the fact that evaluation summaries are of such direct importance to continued employment and the experience of this case would lead me in the future to disregard, for the purposes of paragraph 25.6, any such summary that did not directly if not in haec verba warn the individual of the fact of unsatisfactory professional performance. The Board is entitled to maintenance of its standards of performance but the essence of the observation and evaluation provisions of the Agreement is that the individual be advised of any deficiencies and be given opportunity to correct them as well as having notice of the price of their continuance.

A W A R D

The Union's grievance, claiming that the nonreappointment of Adjunct Lecturer Anselm Vinje-Mopurgo violated Article XVII, Section 17.3, and Article XXV, Section 25.6 of the Agreement, is denied.

August 27, 1973

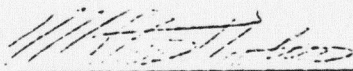

MILTON RUBIN, Arbitrator

EXHIBIT 3 TO CANTOR AFFIDAVIT - MAX-KAHN MEMORANDUM

BOARD OF HIGHER EDUCATION MEETING
DECEMBER 18, 1967

12

ATTACHMENT R

PERSONNEL AND BUDGET PROCEDURES

RECOMMENDATIONS:

- A. The attached memorandum, dated November 7, 1958, and addressed by Pearl Max and Arthur Kahn to the Administrative Council, be reissued, circulated very widely, and recirculated every year, so that newly appointed administrators and faculty may be made aware of it from time to time. (A similar procedure is followed in relation to the Board's policy with respect to student publications, and it has proved reasonably efficacious.)
- B. The following recommendations in the light of subsequent experiences are intended to lend greater precision to the basic document referred to above. Throughout this document, for the sake of simplicity, reference is made only to a department committee on Personnel and Budget. Each such reference is intended to include department committees on appointment, where such committees exist, under plan #1, Board Bylaws, section 9.1d.
 1. The Examination Procedure. The Departmental and College Committees on Personnel and Budget should have constantly before them the fact that they form essential components of the structure whereby the Board of Higher Education and the City University conform to the civil service provisions of the State Constitution (Article V, Section 6)*. Their conduct should reflect at every point a full realization of the official nature of their proceedings, quite distinct from the easy informal interchange of unstructured faculty discussions. Thus:
 - a. Minutes. The minutes of a P & B Committee should conform to the canons set forth by Robert's Rules of Order, Revised: (page 248) "The secretary . . . should keep a record of what was done and not what was said . . ." The actions upon motions, and not the discussion which led to such actions, should be recorded, unless the P & B should order, by a majority vote, that the discussions be recorded. It is the duty of the Chairman of the P & B Committee to rule out of order random and irrelevant discussions of the candidate's merits, and to keep the discussions to the consideration of objective and relevant data, insofar as this is practicable. Voting should be by secret ballot. The minutes should be submitted for approval at the next succeeding meeting.
 - b. Uniform Criteria. The processing of recommendations coming before the P & B Committees should make use of established forms, which should be uniform throughout the college, and, if practicable, throughout the university. The Chancellor's office should prepare such forms for the approval of the Administrative Council. (The content of the papers coming before the P & B Committee may exhibit the widest variation which the college deems desirable; it is the form which should be the same throughout.)
 - c. Evaluation of Teaching Effectiveness. The evaluation of the teaching done by the candidate for reappointment or promotion is a basic element in the "Unassailed civil service examination" procedure. Here again, we recommend a uniform instrument to be filled out by the evaluators, with basic mandatory elements, to be supplemented where this is desirable.

For classroom teachers, consideration should be given to such questions as the teacher's control of the subject matter and the distinctive methods of the discipline, ability to communicate with students and colleagues, effectiveness in stimulating thought, ability to foster active participation in the learning process on the part of students, ability to awaken a conscious sense of a learning experience.

It is often true that, in the evaluation of traits such as these, a teaching observation is a desirable instrument, particularly when less experienced teachers are being judged. But it should be recognized that such observations often provide an inadequate base for judging a teacher and that other means of evaluating teaching effectiveness are available and should be used. For senior professors, the record of their students in subsequent courses, and the testimony of graduates are often valuable. An appraisal of materials, including examinations, prepared for a course can be informative. Contacts with a professor outside the classroom make significant contributions to a valid judgment. An evaluation form should be prepared which encourages consideration of the full range of relevant elements.

When teaching observation reports are used, their major findings should be communicated (by the department chairman) to the teacher who has been observed mainly to the end that the teacher may know what the criticisms of his teaching are and strive to correct them. It should be understood that statements made by others than the chairman have no standing, and such statements should be uniformly avoided. The consideration of teaching effectiveness should in every case form part of the committee deliberations.

* "Appointments and promotions in the civil service of the state and of all of the civil subdivisions thereof, including cities and villages, shall be made according to merit and fitness to be ascertained, as far as practicable, by examination, which, as far as practicable, shall be competitive . . ."

c. Evaluation of Teaching Effectiveness. (continued)

This is not to imply any fixed number of evaluations in any period of time, but the Chancellor should prepare for the approval of the Administrative Council, a minimum schedule of such evaluations.

For members of the instructional staff, such as librarians and counsellors, who are not engaged in classroom teaching, similar evaluation forms should be developed to encourage specific consideration of relevant elements, and a minimum schedule of formal evaluations should be agreed upon. In these cases, too, the supervisor should communicate the evaluator's findings to the staff member involved. A consideration of the effectiveness of the staff member should in every case form part of the P & B committee's deliberations on the member's reappointment or promotion.

- d. Reports of Scholarly and Creative Achievements. Up-to-date reports of each candidate's scholarly and creative achievements, with particular emphasis upon the period following the last major personnel action in his regard, should form part of his personnel record.
- e. Reports of Service to the College Community. Up-to-date reports of each candidate's service to the college community, with particular emphasis on the period following the last major personnel action in his regard, should form part of his personnel record.
- f. Appeals. The action of a departmental P & B committee in refusing to make an affirmative recommendation, unless appealed from by a candidate considering himself aggrieved is final and conclusive as far as faculty action is concerned, and may not be acted upon by any faculty body higher in the chain of promotion procedure (i.e. the divisional or college P & B). Notwithstanding this provision, the president is free to make his own recommendation in accordance with the pertinent bylaws of the Board.

- *2. No Presumptions. At every step in the appointment and reappointment procedure, it should be made clear to the candidate and to all concerned that, until the candidate gains tenure under the provisions of the statute and the bylaws of the Board, each appointment is for one year, there is no presumption of reappointment, and no reasons for non-reappointment need be given. This fact should be communicated, in academic rather than in legalistic language, in the original and subsequent letters of appointment or reappointment, and in all conversations held with the candidate, both by department members and chairman, and by officers of the college outside the department. The temptation to attract promising candidates to the college by implications of the virtual certainty of a permanent position must be sternly resisted, unless and until the tenure law is revised to provide, as many universities do, for permissive initial tenure appointments at certain ranks. In this connection, it should be made quite clear that even the extant provision whereby a person initially appointed to a professorial (full, associate, assistant) rank may be granted tenure after one year is permissive, not mandatory; such tenure actions, like all others, rest solely upon the affirmative action of the Board, and are not accomplished by the recommendations of officers below the Board.

The recommendation that no reasons should ever be given for the action of a committee in voting not to recommend reappointment or promotion of a candidate is a recommendation which was arrived at after a rather careful consideration of the pros and cons.

On the side of giving reasons, the most potent argument arises from a sense of fair play: if a person has tried his best to make good in a position, it seems in accord with our American traditions that he should be told wherein he failed and be given an opportunity to rebut, explain or otherwise appeal. Furthermore, the need to support a non-reappointment by the citation of definite reasons might be conceived of as a barrier to the forces of malice and prejudice, whether personal or ethnic.

On the other side, the necessity to give reasons for non-reappointment, with the consequent receipt of rebuttals, explanations and submission of contrary expert opinion, places the college and its P & B committees in the position of defendant rather than of judge. College officials would soon find their time, energies and talents dissipated in disputes. Academic excellence could not thrive in that atmosphere and a premium would be placed on peaceful mediocrity. Often the reasons have nothing to do with the candidate himself (he may indeed be satisfactory), but rather with the possibility that better candidates, with wider backgrounds, more versatility, or specialties which are more likely to be of use to the department in the years to come, may be available, and the department does not desire to foreclose the opportunity to attract such candidates. More importantly, any requirement that reasons be given for non-appointment would have the effect of instituting a type of presumptive tenure inimical to the conduct of the colleges as institutions of higher learning. It is sufficient that reasons or cause must be

*Exceptions to this paragraph may be made for persons of proven record who have achieved tenure at another recognized institution of higher education and whose first appointment with The City University of New York is to be as full professor.

*2. No Presumptions. (continued)

proven to terminate the services of a tenured person. If it is not too paternalistic in tone, still another argument against the giving of reasons for non-reappointment may be urged: it is really not in the best interest of the candidate himself, for it makes a matter of record a negative evaluation which may come back to plague him later.

On balance, we have decided to recommend against ever assigning reasons for non-reappointment or non-promotion. We likewise believe that it would be professional misconduct for a member of a P & B committee to disclose the substance or even the nature of the discussion at the P & B meeting. As far as the actions of a Department and/or its committees in respect to a candidate are concerned, only the Chairman of the Department should be empowered to discuss these actions with a candidate. As far as the actions of the college P & B committee, with respect to a candidate are concerned, only the president of the college or his designee should be empowered to discuss these actions with a candidate.

3. Confidentiality. The confidentiality of reports, including evaluation reports, on the qualifications of candidates for appointments, reappointments, and promotions should be preserved, and to that end these reports should be kept in a confidential file and should not be part of the candidate's personnel folder.

This recommendation has been arrived at after careful weighing of the affirmative and negative considerations involved. On the side of making these reports available to the candidates, we considered the analog to the right of a person accused to know the nature of the accusations against him, and to confront and cross-examine his accusers. On the other side, we recognize as a countervailing, and indeed a prevailing force, the need which our committee members have, in fulfilling their constitutional obligations as a virtual civil service board of examiners presiding over an unassembled examination, to have at their disposal the professional judgment of those competent to assess the scholarly and instructional qualifications of the candidate. There is little likelihood that leaders in the world of scholarship and college teaching will give us the benefit of their candid opinion of colleagues in their fields if they cannot be assured of confidentiality; indeed, if their expressions of opinion are elicited by a promise of confidentiality, as in practice they must be to secure a really frank expression of judgment, it would be a breach of faith to violate such an undertaking of confidentiality.

4. Inspection of Personnel Folder. Apart from confidential reports, including evaluation reports, considered in the preceding paragraph, the personnel folder of any candidate should be open to his inspection, and to that of persons engaged in official business of the college or department, but not to that of others.

*Exceptions to this paragraph may be made for persons of proven record who have achieved tenure at another recognized institution of higher education and whose first appointment with The City University of New York is to be as full professor.

MEMORANDUM

TO: Administrative Council

Date: November 7, 1938

FROM: Mrs. Max and Mr. Kahn

Re: Appointment and Tenure
procedures with respect to the
instructional staff

A number of cases have arisen in court and elsewhere that have raised questions concerning the procedures used in recommending appointments, reappointments and tenure on the instructional staff. In view of these "clouds on the horizon no larger than a man's hand," it may be helpful to have this review of the legal and procedural basis upon which instructional appointments are made and tenure is granted.

APPOINTMENTS AND PROMOTIONS

Under the provisions of the New York State Constitution (Art. V, Sec. 6), all appointments and promotions in the public service must be made according to merit and fitness to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive.

The legislature has determined that in the case of appointments and promotions in the instructional staff of the Board of Higher Education, the board shall determine to what extent examinations are practicable to ascertain merit and fitness and, in so far as examinations are deemed practicable, to what extent such examinations should be competitive (Education Law, Sec. 6205, subd. 7). To that end the board appointed a committee which investigated the practicability of holding examinations with respect to positions on the instructional staff. On the basis of a study of college practices throughout the country, the committee submitted a report (1941 Minutes of the Board of Higher Education, p. 341, April 28, 1941) recommending that competitive examinations be deemed impracticable for certain instructional positions and that procedures for recruitment and scrutiny by college faculty committees and college officers be used in lieu of formal examinations. The committee stated (p. 347):

*** The bylaws of the Board have been made explicit in prescribing the procedure by which recommendations for appointment to the instructional staff are made. It is a procedure involving an analysis and evaluation of the professional records and achievements of the applicants involved by a Committee of the department, by a joint committee of heads of all departments and by the president of the college. The education, graduate work, publications, teaching experience, research record and numerous other factors evaluated by the Faculty committees and the President in considering candidates for positions are referred to in some detail in the communication from the presidents of the city colleges as set forth in Appendix B. It is definitely and clearly a procedure that is equivalent, at the least, to an unassembled civil service examination.

With the cooperation of the faculties the present bylaws were formulated setting up appointment committees in the departments, review by college committees and the president, and final approval by the board.

The underlying assumptions which justify the procedures established by the bylaws are:

1. That there is a thorough search for the best possible person for the post.
2. That sources most likely to produce suitable candidates are solicited (other colleges, professional associations, recommendations from professional sources, etc.).
3. That an evaluation is made by the appropriate faculty committee of those recommended, as well as those who have themselves filed applications.

Procedurally, it is desirable that written material listing the candidate's training and experience and recommendations from those professionally qualified to pass upon his work be kept on file and be of sufficient quality so that if they were reviewed by someone else with knowledge and experience, that person or agency could reasonably come to the same conclusion as the faculty committee. It would be helpful to have this written material retained for at least one year beyond the date when the candidate's services are terminated. If an appeal concerning the termination of such services is pending, this written material should be retained at least until the appeal is disposed of.

TENURE

The bylaws provide that reappointment on annual salary to certain instructional titles for a fourth year shall carry with it tenure on the instructional staff (sec. 11.2). Since we do not have formal examinations prior to initial appointment, the probationary period is intended to be an integral part of the termination process. Hence it is important that each department arrange orderly and specific procedures for evaluation of each probationer.

When the Tenure Law and bylaws were framed, there was general agreement among representatives of the

faculty and the board that appointment of an instructor for one year, or two years, or three years did not carry with it a presumption of tenure. There was agreement that the best possible persons should be sought and that tenure should be recommended not on the basis of ability to meet minimum qualifications, but on a high standard of excellence and increasing usefulness as a teacher and scholar. Hence non-reappointment for a second, or a third, or a fourth year does not necessarily depend upon poor performance. The possibility of securing a more qualified candidate a year later, or two years later may very well be a factor in deciding upon reappointment or non-reappointment of an existing instructor. Conditions of enrolment, budget, flexibility of teaching staff are also relevant factors in coming to a decision concerning tenure.

However, it is important that there be available objective evaluations which justify whatever conclusion the committee comes to. There is, of course, difference of opinion with respect to the relative weight that should be assigned to visits to classrooms, teaching ability, research, publications, enrolment in an instructor's course, opinions of colleagues and students, and other criteria. However, whatever criteria are used, they should provide an objective and subjective record which, if reviewed by someone else, would indicate a reasonable basis for the determination of the department committee.

Since few of us have infallible memories which can recall oral reports or views with complete accuracy, provision should be made for written reports. The fact that the candidate's competence and abilities have been discussed with him and that he has been given an indication wherever possible of the areas of his weaknesses and strengths should be noted in a written memorandum. There are numerous objective and subjective values that go into a determination of a candidate's ability and though it may sometimes be difficult to be specific, every effort should be made to minimize the subjective criteria and to test those that are used by submission to a committee for determination.

For all practical purposes, decisions as to tenure must be made within 2 1/2 years after a candidate's appointment. Since there is a time interval before evaluation can begin, the period of observation is relatively short. Accordingly, observations and evaluations, once begun, should be consistent and consecutive, rather than sporadic. Notes concerning such evaluations should be made at the time of the evaluation and placed on file.

Bylaw sec.9.2 charges the Chairman of a Department with the responsibility

"for assuring careful observation and guidance of those members of the instructional staff of the department who are on temporary appointment. The chairman of the Department, when recommending such temporary appointees for a permanent appointment shall make full report to the president and the committee on faculty personnel and budget regarding the appointees' teacher qualifications and classroom work, the relationships of said appointees with their students and colleagues, and their professional and creative work."

Each candidate should be informed as early as possible of the intention not to reappoint him for the succeeding year if such non-reappointment is probable. The bylaws provide for written notice by April 1st if service is to be discontinued at the end of the third year. The spirit of the bylaws would indicate that a like disposition be made with respect to decisions at the end of the first and second year, where possible.

It is desirable that notice to a candidate of board action with respect to his appointment for the first, second and third year indicate that the appointment is of a temporary nature, stating the terminal date of the appointment and adding "that services beyond the period indicated in the notice of appointment are possible only if the Board takes affirmative action to that effect" (Sec. 11.7).

No procedure or machinery is infallible. It is inevitable that questions will be raised concerning determinations affecting faculty appointments and tenure. From time to time dissatisfied candidates attack the procedures which lead to determinations of non-reappointment. If tangible and objective records exist upon which the determinations attacked were based, such attacks could be confidently met. It is reasonable to assume that where the procedures heretofore outlined are followed, the determinations of faculty agencies will provide a constructive basis upon which those determinations can be justified.

NOTE: The Bylaw sections referred to in the original November 7, 1953 memorandum have been changed to the current Bylaw sections.

EXHIBIT 4 TO CANTOR AFFIDAVIT - NEW YORK
COURT OF APPEALS DECISION

State of New York
Court of Appeals

RECEIVED
APR 01 1976
VLADICK, ELLIS, VLADICK & LEWIS, P.C.

RECEIVED
PROFESSIONAL STAFF CONGRESS
576 APR -5 AM 9:23

No. 111
In the Matter of Professional
Staff Congress/City University of
New York, Appellant,
vs.
The Board of Higher Education of
the City of New York,
Respondent.

OPINION

This opinion is uncorrected and subject to revision
before publication in the New York Reports.

(111)

Stephen C. Vladeck and Judith P. Vladeck for
appellant.

W. Bernard Richland, Corporation Counsel
(Mary P. Bass of counsel) for respondent.

BREITEL, Ch. J.:

In article 75 (CPLR) proceedings to review an arbitration award rejecting a college teacher's grievance for alleged sex discrimination in denying her tenure, the faculty union appeals. The grievance was raised under a collective bargaining agreement between the union and the New York City Board of Higher Education covering the faculty of the Staten Island Community College.

The appeal is from the order of the Appellate Division affirming a judgment at Special Term confirming the award. The Board had moved to confirm the award and the union moved to vacate the award. The award had rejected the grievance for insufficiency of proof. In the present proceedings the union charges the arbitrator with misconduct in not directing a faculty member of a personnel committee to reveal confidential discussions in the committee concerning the denial of tenure to the college teacher (CPLR 7511, subd [b], par 1, cl [i]). But for such refusal, the union argues, a grievance for discrimination might have been made out.

The issue is whether the arbitrator, concededly empowered to interpret the collective agreement, was entitled to conclude that the

agreement embraced practices and a written policy of the Board mandating the confidentiality of proceedings in the personnel committee. If so, the arbitrator properly refused to compel the faculty witness to breach the rule of confidentiality and was not guilty of misconduct in rejecting pertinent evidence.

There should be an affirmance. Generally an arbitrator may not exclude pertinent evidence. The collective agreement provided, however, that the bylaws of the Board, except if in conflict with the agreement, continued the rights of the entities and bodies within the City University. The bylaws established the Personnel and Budget Committee and, under a so-called Max-Kahn memorandum of many years standing, the proceedings in the personnel committee are confidential. Hence, the arbitrator by his power to interpret the collective agreement was entitled to find that, as the Max-Kahn memorandum provides, it would have been professional misconduct for the faculty member to disclose committee discussions. In so concluding, the arbitrator was not importing a privilege of confidentiality but interpreting, as he had the power to do, the collective agreement. Such interpretation, so long as it was an interpretation of the agreement providing for arbitration, is beyond review in the courts because an arbitrator's award is not subject to judicial review for errors of law or fact.

Professor Irene Deitch is an assistant professor in the Department of Psychology, Sociology and Philosophy in the Staten Island Community College. In the fall of 1972, the departmental committee refused to recommend her for promotion to associate professor with tenure. She appealed to the college-wide faculty Personnel and Budget Committee, and that committee also did not recommend her promotion.

Professor Deitch, who is still employed as an assistant professor at the college, does not hold a doctorate required by the bylaws of the Board for promotion to the rank of associate professor with tenure. The requirement would have to be waived for her to obtain such promotion.

-3-

Following the action of the personnel committees, the faculty union filed a grievance on her behalf, under the collective bargaining agreement. The grievance alleged that the failure of the committees to recommend Assistant Professor Deitch was due to unlawful sex discrimination.

The grievance being unresolved, in accordance with the procedures provided in the collective agreement the faculty union demanded arbitration. An arbitration hearing was begun on May 21, 1973. At the hearing the faculty union presented statistics showing various proportions in number and rank between men and women on the faculty. There was some other undescribed evidence purporting to show some sort of unlawful discrimination against Professor Deitch.

The faculty union offered the testimony of Professor Mortimer Schiff, Chairman of the Department of Performing Arts, and a member of the college-wide personnel committee. When union counsel questioned Professor Schiff about personnel committee discussions, Board counsel objected. The Board counsel argued that a disclosure would violate a rule of confidentiality prescribed by a written policy (the Max-Kahn memorandum) and bylaw incorporated by reference in the collective agreement. The Union counsel argued to the contrary that Professor Schiff should be directed to testify because the grievance and arbitration provisions of the collective agreement guaranteed opportunity for a full hearing, including the right to obtain relevant testimony.

After deliberation, the arbitrator refused to direct Professor Schiff to testify concerning the personnel committee discussions. Thereafter, union counsel stated that it could not sustain its burden without his testimony and therefore would not proceed further. On October 16, 1973 the arbitrator denied the grievance.

An arbitrator's resolution of questions of substantive law or fact is not judicially reviewable (Matter of Raisler Corp. [N.Y.C. Housing], 32 NY2d 274, 282). In an arbitration, substantive and

evidentiary rules applicable in courts of law are waived by the parties. Except as provided by agreement to the contrary the arbitrator is not bound by the rules of evidence (Lentine v. Fundaro, 29 NY2d 382, 385, and cases cited).

An arbitrator's award, however, may be vacated for prejudicial misconduct by the arbitrator (CPLR 7511, subd [b], par 1, cl [i]). One form of misconduct is the refusal to hear pertinent and material evidence (e.g., Gervant v. New England Fire Ins. Co., 306 NY 393, 400; Matter of Katz [Uvegi], 18 Misc 2d 576, 583 [Pette, J.], affd. 11 AD2d 773; see Matter of Raisler Corp. [N.Y.C. Housing], 32 NY2d 274, 282-283, supra, and sources cited).

It would not be misconduct, however, for an arbitrator to refuse to hear evidence excluded by the agreement itself. That result follows from the basic doctrine that parties may by their agreement to arbitrate broaden or narrow its scope (Matter of American-Silk Mills [Meinhard-Commercial], 35 AD2d 197, 200 [Eager, J.]; Domke, Commercial Arbitration, p 99).

Section 6.2 of the collective agreement by definition provides that:

"A grievance is an allegation . . . that there has been:

- (1) a breach, misinterpretation or improper application of the terms of this Agreement; or
- (2) an arbitrary or discriminatory application of, or a failure to act pursuant to, the Bylaws and written policies of the Board related to the terms and conditions of employment."

Sections 1.2 and 1.3 of the collective agreement incorporate nonconflicting Board policy which predates the collective agreement. In pertinent part that agreement provides:

"1.2 Nothing contained in this Agreement shall be construed to diminish the rights granted under the Bylaws of the Board to the entities and bodies within the internal structure of CUNY so long as such rights are not in conflict with this Agreement.

-5-

If provisions of this Agreement require changes in the Bylaws of the Board, such changes will be effected.

1.3 If there is an inconsistency or conflict between the Bylaws of the Board and this Agreement, the provisions of this Agreement shall apply."

There is a Board policy which establishes the confidentiality of personnel committee meetings. In 1958 a memorandum or report by a Mrs. Max and a Mr. Kahn on appointment and tenure procedures was prepared for the Board of Higher Education. In 1967 its recommendations were made formal Board policy and have been followed since. The Max-Kahn memorandum states in part:—

"On balance, we have decided to recommend against ever assigning reasons for non-reappointment or non-promotion. We likewise believe that it would be professional misconduct for a member of a P & B committee to disclose the substance or even the nature of the discussion at the P & B meeting. As far as the actions of a Department and/or its committee in respect to a candidate are concerned, only the Chairman of the Department should be empowered to discuss these actions with a candidate. As far as the actions of the college P & B committee, with respect to a candidate are concerned, only the president of the college or his designee should be empowered to discuss these actions with a candidate [I]t would be a breach of faith to violate such an understanding of confidentiality." [emphasis in the original]

(pars B[2], B[3])

The arbitrator in his opinion and award determined expressly that the Max-Kahn memorandum was a written policy of the Board. He therefore in effect was holding, as he had the unreviewable power to do, that the policy was an integral part of the collective agreement. Consequently, he refused to require Professor Schiff to testify in violation of the Max-Kahn memorandum of policy. True, the arbitrator could not have excluded pertinent evidence. Nevertheless, in accordance with his interpretation of the collective agreement he was required to refuse to direct testimony in breach of an established policy of the Board under its bylaws. This result followed from the express provision of the collective agreement preserving the Board's policies if not

-6-

inconsistent with the agreement. No inconsistency is evident, and it is a vain bootstrap to argue that unlawful discrimination in the framework of consensual arbitration dictates a contrary view.

The subject should not be left without noting that there is an inevitable paradox in submitting issues of unlawful discrimination to consensual arbitration, where the parties are generally free to control the procedures and substantive jurisdiction in arbitration. In a court of law, for example, the testimony of Professor Schiff would not be excludible unless a privilege established by statute or decisional law so requires (People ex rel. Mooney v. Sheriff, 269 NY 291, 294-295; Richardson, Evidence [10th ed.], §409). Moreover, it could hardly be true that unwaivable substantive rights could be waived and they were not "waived" in this matter, but that is not an issue in these proceedings (see Alexander v. Gardner-Denver Co., 415 US 36).

Of course, the voluntary arbitration process is beneficial and preferred as a method for resolution of labor disputes. Yet it is still true that any engagement to arbitrate, by agreement or demand, should always be carefully canvassed in advance for appropriateness (see Fitzhugh, "Role of Arbitrators Under Scrutiny", N.Y.L.J., vol. 174, no. 117, p 1, col 2, Dec. 18, 1975, discussing voluntary labor arbitration in unlawful discrimination cases).

Accordingly, the order of the Appellate Division should be affirmed, with costs.

* * * * *

Order affirmed, with costs. Opinion by Breitel, Ch. J. All concur.

Decided March 30, 1976

-6-

EXHIBIT 5 TO CANTOR AFFIDAVIT - PLAINTIFF'S
AGREEMENT TO WITHDRAW PERB CHARGE

Professional Staff Congress and Annselm Vinje-Morpurgo
hereby agree that:

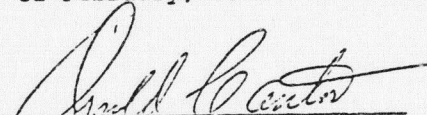
P.S.C. will submit a letter to E.E.O.C. in her case stating that the fact that the P.S.C. did not pursue its allegations under Article VII (Nondiscrimination) in no way establishes that such discrimination may not have taken place, but rather constituted a recognition of limitations imposed by our contract and in arbitration proceedings, and which may not be so limited by the E.E.O.C. guidelines.

The P.S.C. further agrees that it will make available all documents in her files in the possession of the P.S.C. which she may duplicate.

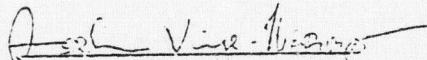
The P.S.C. further agrees that it will request Antony DeMealas to appear at the E.E.O.C. proceedings in her behalf.

Annselm Vinje-Morpurgo hereby agrees to request withdrawal of the charge pending before the New York State Public Employment Relations Board.

Dated at New York, New York this
5th day of February, 1974.


Professional Staff Congress

By: Arnold Cantor, Ex. Dir.


Annselm Vinje-Morpurgo

AFFIDAVIT OF ANNA SELMA VINJE MORPURGO,
PLAINTIFF, IN OPPOSITION TO MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ANNA SELMA VINJE MORPURGO,

Plaintiff,

75 Civ. 4913 (EW)

-v-

PROFESSIONAL STAFF CONGRESS/CUNY,
et al.,

Defendants.

AFFIDAVIT IN OPPOSITION TO
PSC DEFENDANT

-----X
STATE OF NEW YORK)

: SS.:

COUNTY OF SUFFOLK)

ANNA SELMA VINJE MORPURGO, being

duly sworn, deposes and says:

I am the Plaintiff in this action and I make this
supplemental affidavit in opposition to PSC Defendants' Motion for
Summary Judgment pursuant to Rule 56 FRCP.

I affirm that PSC, through its grievance counselor,
Mr. Anthony DeMealas, failed to take sufficient steps to

- (a) perpetuate testimony, preserve documents, and
and other evidence left in its care, which were
forwarded to EHE and never redeemed by PSC.
- (b) schedule adequate conferences with me prior to
any hearing or arbitration, wherein I might have
produced witnesses to depose voluntarily, and
further failed to protect my witnesses from EHE
retaliation, and further failed to take adequate
steps to protect me from EHE retaliation.
- (c) failed to make known to me a conflict of interest
he had, as co-worker with Executive Officer Abraham
Edel, and other persons in the Philosophy program.

I further allege that PSC grievance counselor DeMealas
acted in conspiracy with EHE, Edel, and a number of other persons
among them possibly Judith P. Vladeck and/or Steven Vladeck.

I affirm that the material issues involved make it
imprudent for the Court to decide on summary judgment for PSC if it
denies the motion by the Vladeck Defendants, as the question of
tort and liability in each case is interdependent.

I call attention to the In Camera Statement submitted
sealed to Judge Weinfeld herein.

Sworn to before me this

16th Day of July, 1976

ANNA SELMA VINJE MORPURGO

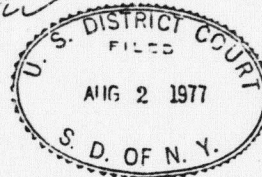
A-55
JUDGMENT APPEALED FROM

W. J. J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
ANNA SELMA VINJE MORPURGO

Plaintiff



PRO SE

: 75 Civil 3840 (EW)

-against-

UNITED STATES OF AMERICA, et al.,

Defendants

:
:
:
JUDGMENT

----- X
ANNA SELMA VINJE MORPURGO

Plaintiff

PRO SE

: 75 Civil 4913 (EW)

-against-

PROFESSIONAL STAFF CONGRESS/CUNY (PSC)
et al.,

Defendants

----- X

Plaintiff having moved the Court for an order for immediate reinstatement and further motions pursuant to Rule 37, of the Federal Rules of Civil Procedure, and the City defendants having moved for summary judgment, pursuant to Rule 56, of the Federal Rules of Civil Procedure, and the said motions having come on to be heard before the Honorable Edward Weinfeld, United States District Judge, and the Court thereafter on July 27, 1977, having handed down its opinion denying plaintiff's motions and the Court having directed that judgment may be entered in favor of the City defendants as well as the remaining defendants in 75 Civil 3840 and 75 Civil 4913, who previously obtained orders granting summary judgment or dismissing plaintiff's complaints, it is,

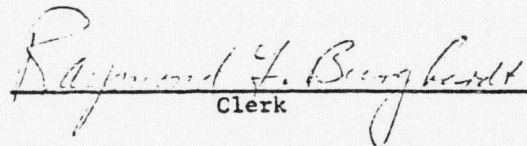
ORDERED, ADJUDGED and DECREED: That defendants UNITED STATES OF AMERICA, et al., have judgment against plaintiff ANNA SELMA VINJE MORPURGO dismissing the complaint in 75 Civil 3840, and it is further,

Morpurgo -v- USA, et al- 75 Civil 3840 and 75 Civil 4913 (EW)

Judgment cont'd

ORDERED, ADJUDGED and DECREED: That defendants PROFESSIONAL STAFF CONGRESS/CUNY (PSC), et al., have judgment against plaintiff ANNA SELMA VINJE MORPURGO dismissing the complaint in 75 Civil 4913.

Dated: New York, N.Y.
August 2, 1977


Clerk

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss .

RICHARD WITHERS, being duly sworn,
deposes and says that deponent is not a party to the action,
is over 18 years of age and resides at 993 UNION AVE
BROOKLYN, N.Y.

That on the 16 day of DECEMBER, 1977,
deponent personally served the within SUPPLEMENTAL APPENDIX
OF DEFENDANT-APPELLEE PROFESSIONAL STAFF CONGRESS (C.U.N.Y. (PSC))
upon the attorneys designated below who represent the
indicated parties in this action and at the addresses below
stated which are those that have been designated by said
attorneys for that purpose

~~By leaving _____ true copies of same with a duly
authorized person at their designated office.~~

By depositing 1 true copies of same enclosed
in a postpaid properly addressed wrapper, in the post office
or official depository under the exclusive care and custody
of the United States post office department within the State
of New York.

Names of attorneys served, together with the names
of the clients represented and the attorneys' designated
addresses

ANNA SELMA VINJE MORPURGO
Plaintiff-Appellant Pro Se
Box 1091
Sag Harbor, New York 11963

ROSEMARY CARROLL, ESQ.
Office of Corporation Counsel, New York City
Attorney for Defendants-Appellees
Board of Higher Education, Abraham Edel, David Newton & Robert Kibbee
Municipal Building
New York, New York 10007

ROBERT B. FISKE, JR.
U.S. Attorney for the Southern District of New York
Nathaniel L. Gerber, Esq.
Attorney for Defendants-Appellees
United States of America, Richard Kleindienst,
William Saxbe, Edward H. Levi & Henry Kissinger
One St. Andrew's Plaza
New York, New York 10007

ROBERT G. DESMOND, ESQ.
WIEN, LANE & MALKIN
Attorneys for Defendant-Appellee
Massachusetts Institute of Technology
60 East 42nd Street
New York, New York 10017

MICHAEL C. MCGOINGS, ESQ.
Attorney for Defendants-Appellees
Arthur W. Stern, Freddie G. Holt, Ralph Munoz, Vincent
Donato, Kasine Walker, Al Kersey & Maxine Archer
Equal Employment Opportunity Commission
2401 E Street, N.W.
Washington, D.C. 20506

MICHAEL MUKASEY, ESQ.
PATTERSON, BELKNAP & WEBB
Attorneys for Defendant-Appellee
Mary Mothersill
30 Rockefeller Plaza
New York, New York 10020

EDWIN L. SMITH, ESQ.
ANTHONY M. LANZONE & ASSOCIATES
Attorneys for Defendants-Appellees
Vladeck Elias Vladeck & Lewis and Judith P. Vladeck
26 Broadway
New York, New York 10006

RONALD S. HERZOG, ESQ.
JACKSON, NASH, BROPHY, BARRINGER & BROOKS
Attorneys for Defendant-Appellee
Princeton University
330 Madison Avenue
New York, New York 10017

Sworn to before me this

16 day of December, 1977

Richard Withers

Michael DeSantis

MICHAEL DESANTIS
Notary Public, State of New York
No. 33-00000000
Qualified in Queens County
Commission Expires March 10, 1979